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No. 16]

NEW DELHI, SATURDAY, APRIL 22, 1989/VAISAKHA 2, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as  
a separate compilation

## भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than  
the Ministry of Defence)

### गृह मंत्रालय

नई दिल्ली, 13 मार्च, 1989

का. भा. 776—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयो-  
जनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4)  
के अनुसरण में केन्द्रीय रिजर्व पुलिस बल, गृह मंत्रालय के निम्नलिखित  
कार्यालयों को, जिनमें 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक  
ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

1. 92 बटालियन, केन्द्रीय रिजर्व पुलिस बल
2. 95 बटालियन, केन्द्रीय रिजर्व पुलिस बल
3. 96 बटालियन, केन्द्रीय रिजर्व पुलिस बल
4. 97 बटालियन, केन्द्रीय रिजर्व पुलिस बल

[सं. 12017/1/89-हिन्दी]

अनुपम बैनर्जी, उप सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 13th March, 1989

S.O. 776.—In pursuance of Sub-Rule (4) of Rule 10 of  
the Official Language (use for official purposes of the Union),  
Rules, 1976, the Central Government hereby notifies the

following offices of the Central Reserve Police Force, Ministry  
of Home Affairs, where 80 percent staff has acquired working  
knowledge of Hindi :—

1. 92 Battalion, Central Reserve Police Force;
2. 95 Battalion, Central Reserve Police Force;
3. 96 Battalion, Central Reserve Police Force;
4. 97 Battalion, Central Reserve Police Force;

[No. 12017/1/89-Hindi]

ANUPAM BANERJEE, Dy. Secy.

(आन्तरिक सुरक्षा विभाग)

(पुनर्वास प्रभाग)

नई दिल्ली, 9 फरवरी, 1989

का. भा. 777—विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास) अधिनियम,  
1954 (1954 का 44) की धारा 34 की उपधारा (2) द्वारा प्रदत्त  
शक्तियों का प्रयोग करते हुए मैं जी. पी. एस. भाड़ी, मुख्य बन्धोबस्त आयुक्त  
एनडू द्वारा उक्त अधिनियम के अधीन बनाए गए 87, 88, 90 (1) (ए),  
90 (1) (बी), 90 (11), 90 (12) और 101 संश्लेषक नियमों के  
अनंतगत तत्काल प्रभाव से मुद्रावजा पुल की एक भाग सभी अर्जित निष्क्रांत  
संपत्तियों, जिनका प्रशासनिक और वित्तीय प्रबंधों के अधीन तमिलनाडु  
सरकार को हस्तांतरण कर दिया गया था के निपटान से संबंधित मुझे  
सौंपी गई शक्तियां बंदोबस्त आयुक्त की शक्तियों का प्रयोग कर रहे श्रीलंका

शरणार्थियों के पुनर्वासि आयुक्त तथा तमिलनाडु सरकार के आयुक्त एवं सचिव, लोक विभाग को सौंपता हूँ।

2. इसके द्वारा भूतपूर्व श्रम एवं पुनर्वासि मंत्रालय (पुनर्वासि विभाग), नई दिल्ली की दिनांक 6-12-1982 की अधिसूचना संख्या 1 (19) विशेष सैल/82 - एम. एस. II (ख) का अधिक्रमण किया जाता है।

[संख्या - 1 (5) विशेष सैल/88-एम. एस. II(ख) ]

जी. पी. एस. साही, मुख्य बन्दोबस्त आयुक्त

(Department of Internal Security)

(Rehabilitation Division)

New Delhi, the 9th February, 1989

S.O. 777.—In exercise of the powers conferred on me by sub-Section (2) of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) I, G.P.S. Sahi, Chief Settlement Commissioner do hereby delegate the powers vested in me in terms of Rules 87, 88, 90(1) (a), 90(1)(b), 90(11), 90(12) and 101 framed under the said Act, to the Commissioner of Sri Lanka Refugees' Rehabilitation and Commissioner and Secretary to Government of Tamil Nadu, Public Department, exercising the powers of Settlement Commissioner, for the purpose of disposal of all acquired evacuee properties forming part of Compensation Pool, transferred to the State Government of Tamil Nadu, under administrative and financial arrangement with immediate effect.

2. This supersedes notification No. 1(19)/Spl.Cell/82-SS-II(B) dated 6th December, 1982 of erstwhile Ministry of Labour and Rehabilitation (Department of Rehabilitation), New Delhi.

[No. 1(5)/Spl.Cell/88-SS-II(B)]

G. P. S. SAHI, Chief Settlement Commissioner

नई दिल्ली, 9 फरवरी, 1989

का. प्रा. 778—निष्क्रान्त सम्पत्ति प्रबन्ध अधिनियम, 1950 (1950 का 31) की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, इसके द्वारा श्रीलंका शरणार्थी पुनर्वासि आयुक्त तथा आयुक्त एवं सचिव, तमिलनाडु सरकार लोक विभाग को उनके अपने कार्यभार के अतिरिक्त उक्त अधिनियम के द्वारा प्रदत्त उसके अंतर्गत तमिलनाडु राज्य में निष्क्रान्त सम्पत्तियों के संबंध में अभिरक्षक को सौंपे गए बंधों का निष्पादन करने के प्रयोजन से निष्क्रान्त सम्पत्ति का अतिरिक्त अभिरक्षक नियुक्त करती है।

2. इसके द्वारा भूतपूर्व श्रम एवं पुनर्वासि मंत्रालय (पुनर्वासि विभाग) की दिनांक 23-11-1982 की अधिसूचना संख्या - 1 (19) विशेष सैल/82 - एम. एस. II (क) का अधिक्रमण किया जाता है।

[संख्या - 1 (5)/विशेष सैल/88 - एम. एस. II (ग) ]

कुलदीप राय, उप सचिव

New Delhi, the 9th February, 1989

S.O. 778.—In exercise of the powers conferred by Sub-Section (1) of Section 6 of the Administration of Evacuee Property Act, 1950 (31 of 1950), the Central Government hereby appoint Commissioner for Sri Lanka Refugees' Rehabilitation and Commissioner and Secretary to Government of Tamil Nadu, Public Department as Additional Custodian of Evacuee Property in addition to his own duties for the purpose of discharging the duties imposed on the Custodian by or under the said Act in respect of evacuee properties to the State of Tamil Nadu.

2. This supersedes Ministry of Labour and Rehabilitation (Department of Rehabilitation's) Notification No. 1(19)/Spl-Cell/82-SS-II(A) dated 23rd November, 1982.

[No. 1(5)Spl. Cell/88-SS-II(C)]

KULDIP RAI, Dy. Secy.

## वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 27 फरवरी, 1989

आयकर

का. प्रा. 779.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 2 के खंड (4) के उप खंड (iii) के अनुसरण में तथा भारत सरकार, राजस्व विभाग की अधिसूचना सं. 8153 (फा. सं. 398/13/88—प्रा. कर (ब.)) दिनांक 3-1-1989 के अधिक्रमण में केन्द्रीय सरकार एतद्वारा श्री मेवा राम को, जो केन्द्रीय सरकार के राजपत्रित अधिकारी हैं, उक्त अधिनियम के अंतर्गत कर वसुली अधिकारी की शक्तियों का प्रयोग करने के लिए प्राधिकृत करती है।

2. यह अधिसूचना उस तारीख से लागू होगी, जिस तारीख से श्री मेवा राम कर वसुली अधिकारी के पद का कार्यभार ग्रहण करने हैं।

[संख्या 8217/फा. सं. 398/13/88—प्रा. कर (ब.) ]

बी. ई. एलैक्जेंडर, अधर सचिव

## MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 27th February, 1989

Income-tax

S.O. 779.—In pursuance of sub-clause (iii) of clause (44) of Section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of Notification of the Government of India in the Department of Revenue No. 8153 (F. No. 398/13/88-IT-(B) dated the 3-1-89 the Central Government hereby authorises Shri Mewa Ram, being a Gazetted Officer of the Central Government to exercise the powers of a Tax Recovery Officer under the said Act.

2. This Notification shall come into force with effect from the date Shri Mewa Ram takes over charge as Tax Recovery Officer.

[No. 8317/F. No. 398/13/88-IT(B)]

B. E. ALEXANDER, Under Secy.

नई दिल्ली, 10 मार्च, 1989

का. प्रा. 780.—केन्द्रीय भविष्य निधि आयुक्त को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापनाओं से संबंधित नियोजन तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) के उपबन्ध निम्नलिखित स्थापनाओं पर लागू किए जायें।

क्र. सं.	स्थापना का नाम व पता	व्याप्ति की तिथि
1	2	3
01.	मै. इलेक्ट्रोफेयर सिस्टम एंड सर्विसेज (प्रा.) लि., 4, लेडी डेसीकाबारी रोड, मद्रास - 4	01-12-1987
02.	मै. पुष्पा इंजिनियरिंग, डी-103, डेक्कनपट्ट प्लॉटम इस्टेट, शूदकूडी, तिरुचिरापल्ली - 15	01-11-1987
03.	मै. आर्च. डी. आर. इलेक्ट्रीकल्स, 72, न्यू बोग रोड, मद्रास - 17	01-06-1988
04.	मै. तमिलनाडु एनर्जी डेवलपमेंट एजेंसी, छावर प्लाजा, चौथी मंजिल, 1-ए, ननगामयककम हाई रोड, मद्रास - 34	01-05-1988
05.	मै. टी. के. सुरेश बीडी, तामाकंकेरी पोस्ट निम्बेरुल्लोर, चिन्मलेपट जि.	01-03-1988

1	2	3	and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely:-
Sl. No.	Name & Address of establishments	Date of Coverage	
1	2	3	
06.	मै. के. एन. रघुनाथन, सी एंड एफ एजेंट, (हिन्दुस्तान लीवर लि.) 57/2बी, मैय्यानूर मेन रोड, सलेम - 4	01-07-1988	1. M/s. Electrocare Systems and Services(P) Ltd., 4, Lady Desikachari Road, Madras-4
07.	मै. भारती कैमिकल्स, 30, वाटकीन्स रोड, पैराम्बूर मद्रास - 11	01-12-1987	2. M/s. Pushpa Engineering, D-103, Developed Plots Estate, Thuvakudi, Tiruchirapalli-15.
08.	मै. श्री विजयालक्ष्मी इंजिनियरिंग वर्क्स, ओ 83, डेवलपड प्लोटस, थूवाकूडी त्रिची - 15	01-12-1987	3. M/s. I.D.R. Electricals, 72, New Boag Road, Madras-17
09.	मै. ईस्टन फुटवियर, नं. 2, टेल्को इंडस्ट्रियल इस्टेट, मधावाराय, मद्रास - 60	01-01-1988	4. M/s. Tamilnadu Energy Development Agency, 1-05-1988 'Jhavar Plaza' IVth Floor, 1-A, Nungambakkam High Road, Madras-34.
10.	मै. लथा इंजिनियरिंग वर्क्स, 67, सी 41, विलेज स्ट्रीट, थिरुवोट्रियूर, मद्रास - 19	01-04-1988	5. M/s. T.K. Suresh Beedi, Talaknchery Post, Tiruvellore, Chingleput District.
11.	मै. कोरोमंडल कन्सल्टेंसी सर्विस प्रा. लि., 62, स्पूर रैंक रोड, चेटपट, मद्रास - 31	01-10-1987	6. M/s. K.N. Raghunathan, C&F Agent, (Hindustan Lever Limited), 57/2B, Meyyanur Main Road, Salem-4
12.	मै. सरेसन फार्मास्यूटिकल मैनुफैक्चर्स, 1 एंड 67, ए. जी. स्टाफ कालोनी, वालासारायक्कम, मद्रास - 87	01-07-1988	7. M/s. Bharani Chemicals, 30, Watkins Road, Perambur, Madras-11,
13.	मै. मूरथी ट्रेस मेकर्स, 1, सेंट्रल एग्येन्स्यू, कोडम्बक्कम, मद्रास - 24	01-12-1987	8. M/s. Sri Vijayalakshmi Engineering Works D/83, Developed Plots, Thuvakudi, Trichy-15
14.	मै. लक्ष्मी आर. सी. सी. सपन पाईप कम्पनी, एरियालूर रोड, कल्लकुडी - 621 652, डालमियापुरम	01-05-1988	9. M/s. Eastern Footwear, No. 2, TALCO Industrial Estate, Madhavaram, Madras-60.
15.	मै. स्पेशल मिश्रीरिटी ब्यूरो, 44, वेकटाकृष्णन रोड, मद्रास - 28	01-05-1988	10. M/s. Latha Engineering Works, 67, C/41, Village Street, Thiruvotriyur, Madras-19.
16.	मै. दि तमिल नाडू नर्सिंग एंड मिडवाइव्स काउंसिल 259-261, अन्नायलार्ई, जी. एम. एम. } कम्पाउंड, मद्रास - 6	01-03-1988	11. M/s. Coromondal Consultancy Service, Private Limited., 62, Spur Rank Road, Chetput, Madras-31.
17.	मै. हार्ड-टेक कंट्रोल एलिमेंट्स (प्रा.) लि., मिडको रोड नं. 12, थूवाकूडी त्रिचिरापल्ली-15	01-03-1988	12. M/s. Sresan Pharmaceutical Manufactures, 1 & 67, A.G.'s Staff Colony, Valasarawakkam, Madras-87.
18.	मै. मलमा लैडर गारमेंट्स, पहली मंजिल, 47, मूथू कॉटन स्ट्रीट, पैरियामेट मद्रास-3 तथा इसका प्रधान कार्यालय 30 बी, कलसफरको रोड, वेनियमवाडी - 5	01-11-1987	13. M/s. Moorthy Dress Makers, 1, Central Avenue, Kodambakkam, Maras-24.
19.	मै. रामभोग इंजिनियर्स (प्रा.) लि., 7ए, वेस्ट मादा स्ट्रीट, सैदापेट, मद्रास - 15	01-04-1988	14. M/s. Lakshmi R C C. Span Pipe Company, Ariyalur Road, Kallakudi-621 652. Dalmiyapuram
20.	मै. एजूकेशनल एंड डेवलपमेंट सर्विसज इंडिया, 93, पेनथॉन रोड, हगमोर, मद्रास - 8	01-04-1988	15. M/s. Special Security Bureau, 44, Venkatakrishnan Road, Madras-28

अतः केन्द्रीय भविष्य निधि आयुक्त, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापनाओं को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापनाओं के नाम के सामने दर्शायी गई है।

[मै. के. भ. नि. आ./1 (4) टी. एन. (46)/89]

OFFICE OF THE CENTRAL PROVIDENT FUND  
COMMISSIONER

New Delhi, the 10th March, 1989

S O 780: -Whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishments have agreed that the provisions of the Employees' Provident Funds

1	2	3
16.	M/s. The Tamil Nadu Nurses & Midwives Council, 259-261, Anna Salari, D.M.S. Compound, Madras-6.	01-03-1988
17.	M/s. Hi-Tek Control Elements(P) Ltd., Sidco Shed No. 12, Thuvakudi, Trichirapalli-15.	01-03-1988
18.	M/s. Salma Leather Garments, First Floor, 47, Wuthu Cotton St., Periamet, Madras-3. including H.O. at 39/B, Kalasafro Road, Vaniyambadi-5.	01-11-1987
19.	M/s. Rambhag Engineers (P) Ltd., 7A, West Mada Street, Saidapet, Madras-15.	01-04-1988
20.	M/s. Educational & Developments Service India, 93, Pantheon Road, Egmore, Madras-8.	01-04-1988

Now, therefore, in exercise of the powers conferred by Sub-section (4) of Section I of the said Act, The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishments from and with effect from the date mentioned against the name of each of the said establishments.

[NO. CPFC/1(4)/TN/(46)/89]

का. आ. 781.—केन्द्रीय पब्लिशिंग निधि प्रायुक्त को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापना से संबंधित नियोजन तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी पब्लिशिंग निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध निम्नलिखित स्थापनाओं पर लागू किए जायें।

क्र. सं.	स्थापना का नाम व पता	व्याप्ति की तिथि
1	2	3
01.	मै. दापम फाइवोजेनिक्स प्रा. लि., 17 ई कम्प्यूनिटी सेंटर, बसंत साक (बसंत बिहार) नई दिल्ली - 57 तथा प्रधान कार्यालय 4-सी, बन्धना टालसटाय मार्ग और ए-8 जी. एस. आई. डी. सी. इंडस्ट्रियल कॉम्प्लेक्स, रोहतक रोड, नई दिल्ली (फैक्ट्री)	01-08-1980
02.	मै. यू. एम. व्हिट एसोसिएट्स, 902 न्यू दिल्ली हाउस, 27 बाराखम्बा रोड, नई दिल्ली	01-08-1986
03.	मै. पैन इंडिया कनसलटेन्ट्स प्रा. लि., सी-1 सी ब्लॉक, कोर्मेशियल एरिया, बसंत बिहार, नई दिल्ली - 57	01-01-1987
04.	मै. गुडलक कनसलटेन्ट्स (प्रा.) लि., 820, जोशी रोड, करोल बाग, नई दिल्ली	01-06-1986
05.	मै. नेवेयर प्रा. लि., 104, प्रगति हाऊस, 47-48 नेहरू प्लेस, नई दिल्ली - 19 (तथा फैक्ट्री खुल्लानपुर, नई दिल्ली और नेवेयर कार-पोरेशन, 47-48 नेहरू प्लेस, नई दिल्ली)	01-01-1987
06.	मै. सनविक इंजिनियरिंग (इंडिया) प्रा. लि., 111, नवजीवन बिहार, नई दिल्ली - 17	01-04-1986
07.	मै. एम. आर. इंडस्ट्रीज, ए - 127, श्रीबला इंडस्ट्रियल एरिया, फेस-II, नई दिल्ली-20	01-05-1986

1	2	3
08.	मै. कलर वर्ल्ड, ई-3, झंडेबालान, रानी जामो रोड, नई दिल्ली - 55	01-01-1986
09.	मै. केबिनेट सेक्रेटरीट एम्प्लॉयज केन्टीन, 8-बी, साऊथ ब्लॉक, नई दिल्ली - 11	01-09-1982
10.	मै. मनहटन स्पोर्ट्स बिथर (प्रा.) लि., 80/3 डब्ल्यू. एच. एस. कीर्ति नगर, नई दिल्ली	01-08-1988
11.	मै. भर्षना टूरस एंड ट्रेवलस, 6/90, मन्नास होटल ब्लॉक, कनाट सर्कस, नई दिल्ली-1	01-08-1988
12.	मै. पटेल प्रॉपर्टी मिल्स, एफ-7, उद्योग नगर, रोहतक रोड, दिल्ली तथा इसका कार्यालय 308/3, शाहजहादा बाग, दिल्ली	01-06-1986
13.	मै. सी. एन. ए. एन्टरप्राइजिज, डी - 5/4 श्रीबला इंडस्ट्रियल एरिया, फेस-II, नई दिल्ली	01-03-1986
14.	मै. रोडरी इंटरनेशनल, बतरा कॉम्प्लेक्स, या. मुखर्जी नगर, दिल्ली	31-03-1986
15.	मै. मनता फूड प्रा. लि., बाबा पोटेरिस कम्पाउंड, विलेज किशनगढ़, महरोली, नई दिल्ली - 30 तथा इसका प्रशासनिक कार्यालय 248, हौज रानी, नई दिल्ली - 110017	01-04-1986
16.	मै. कटाना फूड इंडस्ट्रीज प्रा. लि., बाबा पोटेरिस कम्पाउंड विलेज किशनगढ़, महरोली, नई दिल्ली - 30 तथा इसका प्रशासनिक कार्यालय 243, हौज रानी, नई दिल्ली 110017 तथा सेल्स आफिस : 27 बाराखम्बा रोड, नई दिल्ली में स्थित	01-04-1986
17.	मै. डायनामिक सिस्तेमिटी सर्विसेज, बी-14, बोपालो बिल्डिंग, 92 नेहरू प्लेस, नई दिल्ली - 110019	1-8-1986
18.	मै. भलका इण्डस्ट्रीज, सी-2, राजौरी गार्डन, नई दिल्ली	01-11-1986
19.	मै. लीविंग मिडिया रिसर्च फाउंडेशन, एफ-14-15, फस्ट फ्लोर, कनाट प्लेस, नई दिल्ली तथा पंजीकृत कार्यालय, के-13, कनाट सर्कस, नई दिल्ली - 110001	01-12-1986
20.	मै. गुप्ता एंड कम्पनी, वेम्बर ब्लॉक, कैप्टीन, हाई कोर्ट, आफ दिल्ली, नई दिल्ली	01-03-1987
21.	मै. अभिनव इंजिनियरिंग प्राईवेट लि., सी-2, कम्प्यूनिटी सेंटर, नारायणा बिहार, नई दिल्ली-28	01-07-1986
22.	मै. स्टेरीकलीन, 7513/6, तेल मिल मार्ग, राम नगर, नई दिल्ली - 55	01-07-1986
23.	मै. ग्रीवर प्रोवरसोज (प्रा.) लि. एम-2, योगेश्वर बिल्डिंग, कनाट प्लेस, नई दिल्ली - 1	01-01-1987
24.	मै. मेफेयर इंडस्ट्रीज, 19, राजस्थानी उद्योग नगर, जी. टी. करनाल रोड दिल्ली - 38 रजि. आफिस 410, मोल्ड पोस्ट आफिस स्ट्रीट, सदर बाजार, दिल्ली - 6	01-05-1986
25.	मै. जकुमार एंड कम्पनी प्रा. लि., सी - 20, एस. एम. ए. को. प्रो. इंडस्ट्रियल इस्टेट, जी. टी. करनाल रोड, दिल्ली - 33	01-07-1986



1	2	3	1	2	3
26.	मै. डायमंड एक्सपोर्ट्स, ई-44, कनाट प्लेस, नई दिल्ली	01-01-1983	10.	M/s. Manhattan Sports Wear (P) L d., 80/3, WHS, Kirti Nagar, New Delhi.	1-8-88
27.	मै. टोरे इंडस्ट्रीज, जे-14ए, उद्योग नगर, नानगलोई, दिल्ली-41	01-04-1986	11.	M/s. Archana Tours & Travels, 6/90, Madras Hotel Block, Connaught Circus, New Delhi-1.	1-8-88
28.	मै. जेमेन इंडिया प्र. लि., 1 बसंत लोक, बसंत विहार, नई दिल्ली-57	01-04-1986	12.	M/s. Patel Oil Mills, F-7, Udyog Nagar, Rohtak Road, Delhi, Office at 308/8, Shahzada Bagh, Delhi.	1-6-86
29.	मै. निरवाना टेरप्राईजिज, 42 सज्जी मार्केट चौक, हौज काजी, दिल्ली-6 इंकलूडिंग फैक्ट्री एट ए-129, ग्रीष्मला इंडस्ट्रियल एरिया, फेज-II, नई दिल्ली	01-04-1987	13.	M/s. C.N.A. Enterprises, D-5/4, Okhla Industrial Area, Phase-II, New Delhi.	1-3-86
<p>प्रतः केन्द्रीय अधिष्य निधि प्रायुक्त, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापनाओं को उस या उस प्रभावो निधि से अधिनियम को लागू करते हैं जो उक्त स्थापना के नाम से सामने वर्गीकी गई हैं।</p> <p>[सं. के. भ. नि. मा./1 (4) बी. एल. (49)/89]</p> <p>S.O. 781.—Whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishments have agreed that the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely :</p>			14.	M/s. Rotary International, Batra Complex, Dr. Mukherjee Nagar, Delhi.	31-3-86
			15.	M/s. Manta Foods Pvt. Ltd., Bawa Potteries Compound, Village Kishan Garh, Mehrauli, New Delhi-30, including Admn. Office at 248, Hauz Rani, New Delhi-110017.	1-4-86
			16.	M/s. Katana Food Industries (P) Ltd, Bawa Potteries Compound, Village Kishan Garh, Mehrauli, New Delhi-30, including Admn. Office at 248, Hauz Rani, New Delhi -110017. and Sales Office at 27, Barakhamba Road, New Delhi.	1-4-86
S. Name & Address of the Establishment No.		Date of coverage			
1	2	3			
1.	M/s. Daaps Cryogenics Pvt. Ltd., 17-E, Community Centre, Basant Lok (Vasant Vihar), New Delhi-57 (including H.O. at 4-C, Vandhna, Tolstoy Marg and A-8, DSIDC Ind. Complex, Rohtak Road, New Delhi (Factory))	1-8-80	17.	M/s. Dynamic Security Services. B-14, Deepali Bldg., 92, Nehru Place, New Delhi-19.	1-8-86
2.	M/s. U.S. Whet Associates, 902, New Delhi House, 27, Barakhamba Road, New Delhi.	1-8-86	18.	M/s. Alpha Industries, C-7, Rajouri Garden, New Delhi.	1-11-86
3.	M/s. Pan India Consultants Pvt. Ltd., C-I C-Block, Commercial Area, Vasant Vihar, New Delhi-57	1-1-87	19.	M/s. Living Media Research Foundation, F 14-15, 1st Floor, Connaught Place New Delhi-1 Regd. Office K-13, Connaught Circus, New Delhi-110001.	1-12-86
4.	M/s. Goodluck Consultants (P) Ltd., 820, Joshi Road, Karol Bagh, New Delhi.	1-6-86	20.	M/s. Gupta and Co., Chamber Block Canteen, High Court of Delhi. New Delhi.	1-3-87
5.	M/s. Navair Pvt. Ltd., 104, Pragati House, 47/48 Nehru Place, New Delhi-19, Factory at Sultanpur New Delhi & Navais Corpn. 47/48, Nehru Place, New Delhi.	1-1-87	21.	M/s. Abhinav Engineers, Private, Ltd. C-2, Community Centre, Naraina Vihar, New Delhi-28.	1-7-86
6.	M/s. Sanvik Engineers (India) Pvt Ltd., 111, Navjivan Vihar, New Delhi-17.	1-4-86	22.	M/s. Stericlean, 7513/1, Tel Mill Marg, Ram Nagar, New Delhi-55.	1-7-86
7.	M/s. M.R. Industries, A-127, Okhla Indl. Area, Phase-II, New Delhi-20	1-5-86	23.	M/s. Grover Overseas (P) Ltd., M-2, Yogeshwar Bldg., Connaught Place, New Delhi-1	1-1-87
8.	M/s. Color World, E-3, Jhandewalan, Rani Jhansi Road, New Delhi-55.	1-1-86	24.	M/s. Mayfair Inds., 19, Rajasthani Udyog Nagar, G.T. Karnal Road, Delhi-33 Regd. Office 410, Old Office street, Sadar Bazar, Delhi-6.	1-5-86
9.	M/s. Cabinet Secretariat Employees Canteen, 8-B, South Block, New Delhi-11.	1-9-82			

2	3	1	2	3
25. M/s. Jaquar & Co., Pvt. Ltd., C-20, SMA Co-op. Industrial Estate, G.T. Kunal Road, Delhi-33.	1-7-86	7. मै. श्री कृष्णा पैकैजिंग इंडस्ट्रीज, 7 एन-3बी, पेरिया कुरुपा नावार रोड, शिवाकाशी।		1-1-88
26. M/s. Diamond Exports, E-44, Connaught Place, New Delhi.	1-1-83	8. मै. ओरियंटल प्लांट्स एंड इक्विपमेंट्स, 13/54, ब्रिच रोड, विद्यामनोपुत्र पी.ओ. कोयम्बटूर-641 103.		1-9-88
27. M/s. Toray Industries, J-14A, Udyog Nagar, Nangloi, Delhi-41.	1-4-86	9. मै. जयलक्ष्मी मशीन वर्क, नं. 1425-बी सापी रोड, भारथी नगर, गनपथी, कोयम्बटूर-641 006.		1-11-87
28. M/s. Camron India Pvt. Ltd., 1-Basant Lok, Vasant Vihar, New Delhi-57	1-4-86	10. मै. इकोमवेल, इमीस कम्यूनिटी वेलफेयर फंड, 4, गाजापती स्ट्रीट, गोनट नगर, मद्रास-600030, और प्रभा. कार्यालय: एट ए.एल. 189/4, मेकिड प्लोर, 1 स्ट्रीट, 12 मेन रोड, मन्ना नगर, मद्रास-600 040।		1-4-88
29. M/s. Nirvana Enterprises, 47, Subzi Market Chowk, Hauz Qazi, Delhi-6. including factory at A-129 Okhla Indl. Area, Phase-II, New Delhi.	1-4-87	11. मै. नाथोला समपाथु चेट्टी एंड कंपनी, नं. 123, एन.एस.सी. बोन रोड, मद्रास-79		1-1-88
Now, therefore, in exercise of the powers conferred by Sub-Section (4) of Section I of the said Act, The Central Provident Fund Commissioner hereby applies the provisions of the said Act to the above mentioned establishments from and with effect from the dates mentioned against the name of each of the said establishment.				
[No. CPFC/1(4)DL(48) 89]				
का.प्रा. 782-- केन्द्रीय भविष्य निधि प्रायुक्त को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापनाओं से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) के उपबन्ध निम्नलिखित स्थापनाओं पर लागू किए जायें।				
क.सं.	स्थापना का नाम व पता	व्याप्ति की तिथि		
1.	मै. मैक इंडिया प्रा. लि., 7/41-ए, श्रवनाशी रोड, चिन्नीयामपलायम, कोयम्बटूर-641 062 तथा प्रशासनिक कार्यालय, 117, रैसकोर्स रोड, कोयम्बटूर।	1-9-82	12. मै. हरानीत ऑयल प्रोड्यूसर्स को-ऑपरेटिव कोटेज इंडस्ट्रीयल सोसायटी लि., आई.एन.डी. नं. 302, हरानिल, नययूर 629 802 कन्याकुमारी जिला.	1-5-88
2.	मै. सिक्कूरटो इन्टेमीजेंस सर्विस, (एम.आई.एस.), 6, एम.फे. रेड्डी स्ट्रीट, टम्बारम, मद्रास-45	1-6-88	13. मै. डिपार्टमेंटल कंटीन नेशनल एयरपोर्ट्स अपारिटी, कोयम्बटूर-641 014	1-12-87
3.	मै. श्रीनिवास पेपर इंडस्ट्रीज प्रा.लि., सी-6, इंडस्ट्रीयल इस्टेट, किरुममबैकम, पांडिचेरी-607404 तथा पंजीकृत कार्यालय: 42-बी, डी.डी.ए., फ्लैट्स, मस्जिद मोट-1, नई दिल्ली	1-4-88	14. मै. जी.एम.टी. मैट्रोलीजी प्राईवेट लि. 104, सिपकोट इंडस्ट्रीयल कॉम्प्लेक्स, होसूर-635 126.	1-5-87
4.	मै. मुचिन्द्रम मिल्क प्रोड्यूसर्स को-ऑपरेटिव सोसाइटी, टी.वाई.डी. 308, मुचिन्द्रम पोस्ट-629 704, जिल-कन्याकुमारी	1-3-88	15. मै. बी.बी.एल. सर्विसिज, 11, कलार्डिनार नगर, पाईडी, मद्रास-600 050.	1-4-88
5.	मै. सेंट थोमस मिल्क प्रोड्यूसर्स को-ऑपरेटिव सोसाइटी, बी.आर. डी-81, पालाविसार्ड-629160 द्वारा: कोलनकोड, जिला--कन्याकुमारी	1-9-87	16. मै. नागप्पा इंडस्ट्रीयल वर्क्स, 150, सिडको इंडस्ट्रीयल इस्टेट, रानीपेट-632403 और इसकी शाखा: मै. नागप्पा इंडस्ट्रीयल वर्क्स, 16-ए, खन्ना मट्ट, स्ट्रीट, मधुर-625001.	1-4-88
6.	मै. पीजय पैकैजिंग, 18, टी.ए. रोड, मद्रास-81. कार्यालय: 200, सिडनहमस रोड, मद्रास-112.	1-5-88	17. मै. एशियन मटेरियल्स, 4 सिडको इंडस्ट्रीयल इस्टेट, निरुवरम्बर, ब्रिचो-14	1-3-88
			18. मै. आई.एल.ए. टेनरीज प्रा. लिमिटेड, 21, और 26 सिडको, रानीपेट और इसकी शाखा: 74, पैराम्बर वेंरेक्स रोड, वेपेरी, मद्रास-7	1-4-88
			19. मै. सान्वेशन आर्मी सेक्रेट रियल्टी निग स्कूल फॉर दी फिशोकली हैम्प्रीकीपिड, बंटेओरनीमायम, नायरकोडल-629 003. कन्याकुमारी डिस्ट्रिक्ट.	1-9-88
			20. मै. माहू एण्ड कम्पनी, 4 जी. दूसरी मंजिल, सयाडु बिल्डिंग्स, सिडुपूडुरा, तिरुनलवली जं.ग.	1-7-88
			21. मै. जी. क. आर. इंडस्ट्रीज, बी-15, सिडको इंडस्ट्रीयल इस्टेट, बिल्लीबैकम, मद्रास-49.	1-4-88
			22. मै. दी टैक्सटाइल लेबरर्स को-ऑपरेटिव स्टोर लि. नं. 25, पालमनेरी रोड, गुडियायम, एन.ए. डिस्ट्रिक्ट और इसकी शाखा: 24, पालमनेरी रोड, कोबा समुतरम, एन.ए. डिस्ट्रिक्ट.	1-3-88

1	2	3
23.	मै. रूफ सील (मद्रास) प्रा. लि. 561/1, बंगारम रोड, भम्बायूर, मद्रास-600 058	1-5-88

अतः केंद्रीय भविष्य निधि प्रायुक्त, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापनाओं को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापनाओं के नाम के सामने दर्शायी गयी हैं।

[मै. सी.पी.एफ.सी./1(4)/तमिलनाडु/(47)/89]

S. O. 782.—Whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishments have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) should be made applicable to the said establishments namely:—

S.No.	Name & Address of the Establishment	Date of coverage
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1	2	3
---	---	---

1.	M/s. Mak India Pvt. Ltd., 7/41-A, Avanshi Road, Chinnimpalayam, Coimbatore-641062, including Administrative Office at 117, Race Course Road, Coimbatore.	1-9-82
2.	M/s. Security Intelligence Service, (SIS) 6, M.K. Reddy Street, Tambaram, Madras-45	1-6-88
3.	M/s. Srinivas Paper Industries P. Ltd., C-6, Industrial Estate, Kirumambikkam Pondicherry-607404, including Regd. Office at 42-D, DDA Flats, Masjid Moth-New Delhi.	1-4-88
4.	M/s. Suchindram Milk Producers Co-Op. Society, T.Y.D.308 Suchindram, Post-629740, Kanyakumari District.	1-3-88
5.	M/s. St. Thomas Milk Producers Co-Op. Society VRD-81, Palavilai-629160, Via: Kollencode, Kanyakumari District.	1-9-87
6.	M/s. Peejay Packaging, 18, T.H. Road, Madras-81, Office at 200, Sydenhams Road, Madras-112	1-5-88
7.	M/s. Sri Krishna Packaging Inds., 7N-3B Peria Karuppa Nadar Road, Sivakasi.	1-1-8
8.	M/s. Oriental Plants & Equipments, 13/54, Trichy Road, Chinthamanipudur P.O. Coimbatore-641 103.	1-9-88
9.	M/s. Jayalakshmi Machine Works, No. 1425-B Sathy Road, Bharathi Nagar, Ganapathy, Coimbatore-641 006.	1-11-87
10.	M/s. Eemwel, Emmaus Community Welfare Fund, 4, Gajapathy Street, Shenoy Nagar Madras-600 030, including Admn. Office at AL 189/4, 2nd Floor, 1st Street, 12th Main Road, Anna Nagar, Madras-600 040	1-4-88

1	2	3
11.	M/s. Nathella Sampathu Chetty & Co., No. 123, N.S.C. Bose Road, Madras-79	1-1-88
12.	M/s. Eraniel Oil Producers Co-operative Cottage Industrial Society Ltd., IND: 302, Eraniel, Neyyoor Post. 629 802, Kanyakumari District.	1-5-1988
13.	M/s. Departmental Canteen, National Airports Authority, Coimbatore-641 014.	1-12-1987
14.	M/s. GMT Metrology Private Limited, 104, Sipcot Industrial Complex, Hosur-635 126	1-5-1987
15.	M/s. B.V.L. Services, 11, Kalaivanar Nagar, Padi, Madras 600 050.	1-4-1988
16.	M/s. Nagappa Industrial Works, 150, SIDCO Indl. Estate, Ranipet 632 403, including Branch Office M/s. Nagappa Industrial Works, 16-A, Khanna Mettu Street, Madurai-625 001.	1-4-1988
17.	M/s. Asian Structures, 4, SIDCO Industrial Estate, Tiruvembur, Trichy-14.	1-3-1988
18.	M/s. ILA Tanneries P. Ltd., 21 & 26 SIDCO, Ranipet and its branch-74, Perambur Barracks Road, Vepery, Madras-7.	1-4-1988
19.	M/s. The Salvation Army Secretarial Training School for the Physically Handicapped, Vettoor-Nimadram, Nagercoil-629 003, Kanyakumari District.	1-9-1988
20.	M/s. Mahoo & Company, 4-G, II Floor, Seyadu Buildings, Sindupcondurai, Tirunelveli Jp.	1-7-1988
21.	M/s. G.K.R. Industries, B-15, SIDCO Industrial Estate, Villivakkem, Madras-49.	1-4-1988
22.	M/s. The Textile Labourers' Co-Op. Stores Ltd., No. 25, Palamaneri Road, Gutiyatham, N.A. Dt., including branch at 24, Palamaneri Rd., Konda Samutram, N.A. District.	1-3-1988
23.	M/s. Roof Seal (Madras) P. Ltd., 561/1, Vanagaram Road, Ambathur, Madras-600 058.	1-5-1988

Now, therefore, in exercise of the powers conferred by Sub-Section (4) of Section I of the said Act, The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishments from and with effect from the dates mentioned against the name of each of the said establishments.

[No. CPFC/1(4)/TN(47)/89]

का. घा. 783.—केन्द्रीय भविष्य निधि प्रायुक्त को जहाँ यह प्रतीत होता है कि निम्न लिखित स्थापनाओं से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) के उपबन्ध निम्न-लिखित स्थापनाओं पर लागू किए जायें।

क्र. सं.	स्थापना का नाम व पता	स्थापित की तिथि
1	2	3
01.	मै. जय विजय सिक्योरिटी सर्विस, 3/14, एन.एच.आई. मराईमलाई नगर, चिंगलेपट	01-04-1988
02.	मै. बालसन कार्मा, 34, अलवर थिरुनगर एनेक्सो मद्रास - 87	01-07-1988
03.	मै. होटल अलीगर, 12, पार्क स्टेशन रोड, मद्रास - 3	01-06-1988
04.	मै. सेवुगनस, जी-30, इण्डस्ट्रियल एस्टेट, मद्रास - 58	01-04-1988
05.	मै. समबा पब्लिशिंग कम्पनी, 2, फरेन्सीज जोसफ सेन्ट, मद्रास - 1	01-12-1987
06.	मै. रोहिणी केबलस, 868, एम.टी.एच. रोड, पाडी, मद्रास - 50	01-02-1988
07.	मै. स्पान कम्पनी प्रा. लि., 35, सेम्बुदोस स्ट्रीट, मद्रास - 600001 तथा इसकी शाखाएं नं. 2, कोन्डी चेट्टी स्ट्रीट मद्रास - 1 और कोयम्बटूर में स्थित।	01-07-1988
08.	मै. लाल सिक्योरिटी सर्विस, 8, दामोदर मुडाली स्ट्रीट, स्पर्टैंक रोड, चेटपट मद्रास - 31	01-04-1988
09.	मै. पी. एस. इलेक्ट्रीकल्स (प्रा.) लि., नो - 26, 27, इण्डस्ट्रियल इस्टेट, गुन्डी, मद्रास - 32	01-04-1988
10.	मै. इण्डाग फाइनेन्स एंड गारंटी कं. (प्रा.) लि., 62, स्पूर टैंक रोड, मद्रास - 31	01-04-88
11.	मै. डिपॉजिटरी टिफिन हॉम, पोस्टल स्टोर्स डिपो, त्रिची - 620001	01-03-1988
12.	मै. स्नेप सर्विस (प्रा.) लि., 20, मुकर नालामु स्ट्रीट, मद्रास - 600001	01-05-1988
13.	मै. एम. घा. इण्डलुमज, 5, मरीयामनकोल स्ट्रीट, कुर्नीन जीवाडी तथा शाखा 4/9, सी, धर्मन नगर पेपर मिल रोड, पालीपलयम हरोडे में स्थित।	01-01-1988
14.	मै. स्कैनलोग सिस्टमस (प्रा.) लि., 12, सनथोमी हाई रोड, मद्रास - 600004	01-06-1987
15.	मै. कामाकोडी, इंडस्ट्रीज, नं. 1, सिङ्को, मुकुण्डरायपुरम, रानीपट और शाखा 31, महदेवन स्ट्रीट, टी. नगर, मद्रास - 17 में स्थित	01-07-1988
16.	मै. वसन्त प्रिण्टर्स, एस - 9, इण्डस्ट्रियल एस्टेट, गुन्डी, मद्रास - 600032	01-04-1988
17.	मै. साउमग इलेक्ट्रोनिक्स लि., प्लॉट नं. 7, थोर 8, एन. एच. 7, एम.एम.डी.ए. इण्डस्ट्रियल इस्टेट एम.एम. नगर चिन्नलीपुट जिला तथा शाखा 75-ए, फर्स्ट एवेन्यू, इन्ना नगर, मद्रास - 20 में स्थित।	01-03-1988

1	2	3
18.	मै. इण्डस्ट्रियल सिक्योरिटी सर्विस, 37, मरीयामन कोयल स्ट्रीट, पैरामनुर, सलेम - 636007	01-07-1988
19.	मै. साउथन सिक्योरिटी गार्ड एजेंसी, कम नं. 5, पहली मंजिल, ए. के. पी. कैमलेक्स नं. 1, पैरामनुर मेन रोड, सलेम - 7	01-07-1988
20.	मै. अयन फायर वर्क्स (प्रा.) लि. 12ए, जेयरमैन ए. शानमुगम रोड, शिवाकासी	01-06-1988

धतः केन्द्रीय भविष्य निधि प्रायुक्त, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापनाओं को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापनाओं के नाम के सामने दर्शायी गई हैं।

[सं. के. भ. नि. घा./1 (4)/टी. एन. (49)/89]

S.O. 783.—Whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishments have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely :—

S.No.	Name & Address of the Estt.	Date of Coverage
1	2	3
01.	M/s. Jai Vizay Security Service, 3/14, NHI Maraimalai Nagar, Chingleput.	01-04-1988
02.	M/s. Balsan Pharma, 34, Alwar thirunagar Annexe, Madras-87.	01-07-1988
03.	M/s. Hotel Aligar, 12, Park Station Road, Madras-3.	01-06-1988
04.	M/s. Sevugan's G-30, Industrial Estate, Madras-58	01-04-1988
05.	M/s. Samba Publishing Co., 2, Francis Joseph St., Madras-1	01-12-1987
06.	M/s. Rohini Cables, 868, M.T.H. Road, Padi, Madras-50.	01-02-1988
07.	M/s. Span Co. Pvt. Ltd., 35, Sembudoss Street, Madras-600001 including branches at No.2 Kondichetty Street, Madras-1 & Coimbatore.	01-07-1988
08.	M/s. Loyal Security Services, 8, Damodar Mudali Street, Spurtank Road, Chetput, Madras-31.	01-04-1988
09.	M/s. P.S. Electricals (P) Ltd., C.26, 27, Industrial Estate, Guindy, Madras-32.	01-04-1988
10.	M/s. Indag Finance & Guarantee Company (P) Limited, 62, Spur Tank Road, Madras-31.	01-04-1988

1	2	3	1	2	3
11.	M/s. Departmental Tiffin Room, Postal Stores Depot, Tiruchi-620 001.	01-03-1988	03.	मै. कैलाशपति कोल्ड स्टोरेज प्रा. लि., विलेज काबले (अरामबाग रोड) पी. ओ. दक्षिण रसूलपुर, जि. हुगली तथा इसका रजि. ऑफिस 55, भूपेन्द्र बोस एवेन्यू, कलकत्ता - 700004	01-07-1988
12.	M/s. Snap Service (P) Ltd., 20, Mooker Nallamuthu Street, Madras-600 001.	01-05-1988	04.	मै. प्रोफेशनलस कन्स्ट्रक्शन कम्पनी (प्रा.) लि. 16ए, एडवरेस्ट हाऊस 46/सी, चौरंगी रोड, कलकत्ता - 700071	01-09-1988
13.	M/s. M.R. Handlooms, V. Mariammankoil Street, Kurinipadi and branch at 4/9 C, Amman Nagar, Paper Mill Road, Pallipalayam Erode.	01-01-1988	05.	मै. कोमोडोटीस इन्टरनेशनल, 33ए, चौरंगी रोड, फ्लैट 4-ए, म्यारबी मंजिल, कलकत्ता - 700071	01-09-1988
14.	M/s. Scanlog Systems (P) Ltd., 12, Santhome High Road, Madras-600 004.	01-06-1987	06.	मै. ए. एस. रोटोटेक लिमिटेड, 6ए, मिडिलटन स्ट्रीट, कलकत्ता - 700071 सेल्स एंड अकाउंट्स ऑफिस : 99/5/6 बंसीगंज प्लेस, कलकत्ता - 700019 फैक्ट्री : कामदेवपुर, पी. ओ. मिरहूटी, पी. एस. अमर्गं, 24 प्रगनरा (एन) ब्रांच बम्बई :- 306, अमबेसी सेंटर, नारीमन पॉइंट, बम्बई - 400 021 नई दिल्ली :- 1212-बी, हेमकंट टॉवर, 98, नेहरू प्लेस, नई दिल्ली - 110019 गदरास :- रोजीगट बर, 97, सनगाभदखना हाई रोड, मद्रास - 600034	01-10-1987
15.	M/s. Kamakodi Industries, No.1, SIDCO, Mukundarayapuram, Ranipet, Branch at 31, Mahadevan Street, T. Nagar, Madras-17.	01-07-1988	अतः केन्द्रीय भविष्य निधि अध्याय, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापनाओं को उस या उस प्रभावी तिथि से अधिनियम की लागू करते हैं जो उक्त स्थापना के नाम के सामने दर्शायी गई हैं।		
16.	M/s. Vasant Printers, S-9, Industrial Estate, Guindy, Madras-600 032.	01-04-1988	[सं. के. भ. नि. प्रा./1(4)/वे. बं./50/89]		
17.	M/s. Soumag Electronics Ltd., Plot No.7, & 8 NH VII, MMDA Industrial Estate, M.M. Nagar Chengelpet Distt. and branch at 75A, 1st Avenue, Indira Nagar, Adyar, Madras-70.	01-03-1988	S.O. 784.—whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishments have agreed that the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely :—		
18.	M/s. Industrial Security Service, 37, Mariamman Koil Street, Peramanur, Salem-636 007.	01-07-1988			
19.	M/s. Southern Security Guard Agency, Room No.5, 1st Floor, A.K.P. Complex, No.1, Peramanur Main Road, Salem-7.	01-07-1988			
20.	M/s. Ayyan Fire Works (P) Ltd., 12A, Chairman A. Shanmugam Road, SIVAKASI.	01-06-1988			

Now, therefore, in exercise of the powers conferred by Sub-Section (4) of Section I of the said Act, The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishments from and with effect from the dates mentioned against the name of each of the said establishments.

[No. CPFC/1(4)/TN(49)89]

क. प्र. 784—केन्द्रीय भविष्य निधि अध्याय को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापनाओं से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध निम्नलिखित स्थापनाओं पर लागू किए जायें।

क्र. सं.	स्थापना का नाम व पता	व्याप्ति की तिथि
1	2	3
01.	मै. विबयोर प्रिंटिंग एंड पैकेजिंग प्रा. लि. 2, गणेश चन्द्रा एवेन्यू, कलकत्ता - 700013 तथा फैक्ट्री पी. ओ. बंकरा, गांव - बंकरा, जिला हवड़ा	01-06-1987
02.	मै. कोनि प्रोपर्टीज प्रा. लि., 6बी, देवप्रसाद रो. कलकत्ता - 14 और इसकी ग्रैंड नफर बाबू का बाजार, 144, विपिन बिहारी गोमूरी स्ट्रीट, कलकत्ता - 14	01-12-1987

S.No.	Name & Address of the Establishments	Date of Coverage
1	2	3
01.	M/s. Vibgyor Printing and Packaging (Pvt.) Ltd., 2, Ganesh Chandra Avenue, Calcutta-700013, & Factory at P.O. Bankra Vill. Bankra, Distt, Howrah	01-06-1987
02.	M/s. Kolay Properties (P) Ltd., 6B, D. babarasad Row, Calcutta-14, and its branch Naffar Babu's Bazar, 144, Bepin B hari Ganguli Street, Calcutta-14	01-12-1987
03.	M/s. Kailaspati Cold Storage Private Ltd., Vill. Kable (Arambag Road) P.O. Dakshin Rasulpur Dist. Hooghly and its Regd. Office 55, Bhupendra Bose Avenue, Calcutta-700004.	01-07-1985

1	2	3
04.	M/s. Professionals Construction Co.(P) Limited, 16A, Everest House, 46/C, Chowringhee Road, Calcutta-700071.	01-09-1988
05.	M/s. Commodities International, 33A, Chowringhee Road, Flat 4-A, 11th Floor, Calcutta-700071.	01-09-1988
06.	M/s. A.S. Rototech Limited, 6A, Middleton Street, Calcutta-700071 and Accounts Sales/Office : 99/5/6 Ballyganj Place, Calcutta-700019 Factory : Kamdevpur, P.O. Mirhari, P.S. Amlanga, 24 Paragnas (N) Branches at Bombay : —306, Embassy Centre, Naiman Point, Bombay-400021.  New Delhi : —1212-B, Hemkunt Tower, 98, Nehru Place, New Delhi-110019  Madras : —Rosy Tower, 97, Nungambkhana High Road, Madras-600034.	01-10-1987

Now, therefore, in exercise of the powers conferred by Sub-Section(4) of Section I of the said Act, The Central Provident Fund Commissioner hereby applies the provisions of the said Act to the above mentioned establishments from and with effect from the dates mentioned against the name of each of the said establishments.

[No.CPFC/1(4)/WB/(50)89]

का. प्र. 785—केन्द्रीय भविष्य निधि आयुक्त को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापना से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) के उपबन्ध निम्नलिखित स्थापना पर लागू किए जायें।

क्र. सं.	स्थापना का नाम व पता	व्याप्ति की तिथि
01.	मै. वी. शिमला तहमील को. ओप. मॉर्टेगिज एंड कंप्यूटर यूनिज लि., घाली, शिमला-12 तथा इसकी शाखायें गन्जी मंडी, ब्रांच, खालीनी टोडू ब्रांच, तागदेवी ब्रांच, मणोवरा ब्रांच, बैसा ब्रांच	01-04-87

अतः केन्द्रीय भविष्य निधि आयुक्त उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापना को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापना के नाम के सामने दर्शायी गई है।

[सं. के. भ. नि. प्रा. /1(4)/पंजाब/(51)/89]

S.O. 785.—Whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishments have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely:—

S. No.	Name & Address of the Establishment	Date of Coverage
01.	M/s. The Shimla Tehsil Co-op. Marketing & Consumer Union Ltd. Dhalli, Simla-12 including its branches at Subzi Mandi Branch Khalini Branch, Totu Branch, Tara Devi Branch, Mashobra Branch, Thailaa Branch.	01-04-87

Now, therefore, in exercise of the powers conferred by Sub-Section (4) of Section I of the said Act. The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishment from and with effect from the date mentioned against the name of each of the said establishment.

[No. CPFC/1(4)PB(51)/89]

का. प्र. 786—केन्द्रीय भविष्य निधि आयुक्त को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापना से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) के उपबन्ध निम्नलिखित स्थापना पर लागू किए जायें।

क्र. सं.	स्थापना का नाम व पता	व्याप्ति की तिथि
01.	मै. मैक्स मूलर भवन, 42(वी) महात्मा गांधी रोड, बंगलूर-1	01-01-1987

अतः केन्द्रीय भविष्य निधि आयुक्त उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त स्थापना को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापना के नाम के सामने दर्शायी गई है।

[सं. के. भ. नि. प्रा. /1(4) के. एन./ (52)/89]

S.O. 786.—Whereas it appears to the Central Provident Fund Commissioner that the employers and the majority of employees in relation to the following establishment have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely:—

S. No.	Name & Address of the Estt.	Date of coverage
01.	M/s. Max Mueller Bhawan, 42(V) Mahatma Gandhi Road, BANGALORE-1.	01-01-87

Now, therefore, in exercise of the powers conferred by Sub-Section (4) of Section I of the said Act, The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishment from and with effect from the date mentioned against the name each of the said establishment.

[No. CPFC/1(4)/KN(52)/89]

का. प्र. 787—केन्द्रीय भविष्य निधि आयुक्त को जहाँ यह प्रतीत होता है कि निम्नलिखित स्थापना से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य

निधि और प्रकीर्ण उपबन्ध अधिनियम 1952 (1952 का 19) के उपबन्ध निम्नलिखित स्थापना पर लागू किए जायें।

क्र.सं. स्थापना का नाम व पता	व्याप्ति की तिथि
01. मै. सरकार फर्निचर वर्क्स, 46, कदमा मार्केट, जमशेदपुर-831005.	01-05-1987

अतः केन्द्रीय भविष्य निधि आयुक्त, उक्त अधिनियम की धारा 1 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए उपर्युक्त स्थापना को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापना के नाम के सामने दर्शायी गई है।

[सं. के.न.नि.आ./1(4)/क्र.आ./ (53)/89]

S.O. 787.—Whereas it appears to the Central Provident Fund Commissioner that the employer and the majority of employees in relation to the following establishments have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), shown be made applicable to the said establishment, namely :—

S. No.	Name & Address of the Estt.	Date of coverage
01.	M/s. Sarkar Furniture Works, 46, Kadma Market, Jamshedpur-831005.	01-05-87

Now, therefore, in exercise of the powers conferred by Sub-section (4) of Section 1 of the said Act. The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishment from and with effect from the date mentioned against the name of each of the said establishment.

[No. CPFC/1(4)/BR/(53)/89]

का.आ. 788.—केन्द्रीय भविष्य निधि आयुक्त को जहां यह प्रतीत होता है कि निम्नलिखित स्थापनाओं से संबंधित नियोजता तथा कर्मचारियों का बहुमत इस बात से सहमत हो गए हैं कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) के उपबन्ध निम्नलिखित स्थापनाओं पर लागू किए जायें।

क्र.सं. स्थापनाओं का नाम व पता	व्याप्ति की तिथि
01. मै. जवाहर बाल भवन, अलेपेय-688011.	01-04-1988
02. मै. मैनुअल संस हाउसिंग डेवलपमेंट क. (प्रा.) लि., एम.ओ. रोड, त्रिचुर-680001.	01-10-1988

अतः केन्द्रीय भविष्य निधि आयुक्त, उक्त अधिनियम, की धारा 1 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए उपर्युक्त स्थापनाओं को उस या उस प्रभावी तिथि से अधिनियम को लागू करते हैं जो उक्त स्थापना के नाम के सामने दर्शायी गई है।

[सं. के.न.नि.आ./1(4)/केरल/(54)/89]  
एम.पी. मेहरोत्रा, केन्द्रीय भविष्य निधि आयुक्त

S.O. 788.—Whereas it appears to the Central Provident Fund Commissioner that the employer and the majority of employees in relation to the following establishment have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishments namely:—

S. No.	Name & Address of the Estt.	Date of Coverage
01	M/s. Jawahar Bal Bhavan Alleppey-688011.	01-04-1988
02.	M/s. Manuelsons Housing Development Co. (P) Ltd., M.O. Road, Trichur-680001.	01-10-1988

Now, therefore, in exercise of the powers conferred by Sub-Section (4) of Section 1 of the said Act, The Central Provident Fund Commissioner hereby applies the Provisions of the said Act to the above mentioned establishments from and with effect from the dates mentioned against the name of each of the said establishments.

[No. CPFC/1/(4)/KR/(54)/89]

S. P. MEHROTRA, Central Provident Fund  
Commissioner

विदेश मंत्रालय

नई दिल्ली, 6 मार्च, 1989

का.आ. 789.—राजनयिक कौंसर्न अधिकारी (अपय एवं शुल्क) अधिनियम, 1948 (1948 का 41 वां), की धारा 2 के खण्ड (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास रिमाद में सहायक श्री के.सी. सेठी को 2-3-1989 से कौंसल एजेंट का कार्य करने के लिए प्राधिकृत करता है।

[सं. टी. 4330/1/89]

जी. जागन्नथन, उप सचिव (कौंसल)

## MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 6th March, 1989

S.O. 789.—In pursuance of the clause (a) of Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorise to Sh. K. C. Sethi, Assistant in the Embassy of India, Riyadh to perform the duties of Consular Agent with effect from 2-3-1989.

[No. T. 4330/1/89]

G. JAGANNATHAN, Dy. Secy. (Consular)

## इस्पात और खान मंत्रालय

(इस्पात विभाग)

नई दिल्ली, 13 फरवरी, 1989

का.प्रा. 790.—राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम-10 के उप नियम (4) के अनुसरण में केन्द्रीय सरकार एतद्वारा हिन्दुस्तान स्टीलवर्क्स कंस्ट्रक्शन लि., भिलाई को, अिनके कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करता है।

[सं. ई.-11011(1)/88-हिन्दी]

मनमोहन श्रीवास्तव, उप सचिव

## MINISTRY OF STEEL AND MINES

(Department of Steel)

New Delhi, the 13th February, 1989

S.O. 790.—In pursuance of sub-rule (4) of rule 10 of rule Official Language, (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notifies Hindustan Steel Works Construction Limited, Bhilai whereof the staff have acquired working knowledge of Hindi.

[No. E-11011(1)/88-Hindi]

M. M. SRIVASTAVA, Dy. Secy.

श्रम मंत्रालय

नई दिल्ली, 29 मार्च, 1989

का.आ. 791:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सन्दूक बैंक आफ इंडिया के प्रबन्धन के संबंध निपटारों और उनके कार्यकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-89 को प्राप्त हुआ था।

## MINISTRY OF LABOUR

New Delhi, the 29th March, 1989

S.O. 791.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on the 23-3-1989.

## ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
AT CALCUTTA

Reference No. 21 of 1985

## PARTIES :

Employers in relation to the management of Central Bank of India.

AND

Their workmen

## APPEARANCES :

On behalf of employer.—Mr. S. C. Ghosh, Law Officer of the Bank.

On behalf of workman.—Mr. Kalyan Biswas, a co-worker.

STATE : West Bengal.

INDUSTRY : Banking

## AWARD

By Order No. L-12012/281/84-D.II(A) dated 17th June, 1985, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Central Bank of India, 33 Netaji Subhas Road, Calcutta in terminating the service of Shri Amalesh Chandra Kar, Accounts Clerk in Raiganj Branch, West Dinajpur from June '83 is justified? If not, to what relief is the workman concerned entitled ?”

2. The case as made out by workman concerned Shri Amalesh Chandra Kar in his written statement is briefly as follows : The workman concerned was in the permanent service of the employer Central Bank of India (hereinafter referred as the Bank) and was posted as a Clerk at the Bank's Raiganj Branch under Siliguri Division of the Bank. The workman concerned was suspended from his service sometime in March, 1981 on some false allegations most arbitrarily. After laps of more than one year from the date of suspension the employer Bank issued the charge-sheet on 6th April, 1982 upon the concerned workman on false allegations namely that the workman concerned unauthorisedly collected deposits under the mini deposit agency of Shri P. B. Sarkar and thereby committed the misconduct under the bipartite settlement, that the amounts of collected by the concerned workman were not deposited in the respective accounts of the depositors and the workman thereby tried to misappropriate the amount of Rs. 49,796 and that the concerned workman absented himself from his duty from 25th August, 1980 to 25 March, 1981 is without obtaining prior sanction of the leave. The departmental proceedings was started against the concerned workman and the domestic enquiry was held by

one Shri S. M. Basu, Chief Law Officer of the Calcutta Regional Office of the Bank. The employer Bank appointed Shri S. C. Ghosh, M.A., LL.B., a Law Officer of the Bank to present the case of the management in the domestic enquiry.

3. The concerned workman unfortunately could not get any representative of the Union for rendering him assistance in the domestic enquiry, although he was previously assured to get such assistance. The concerned workman accordingly requested the Enquiry Officer to allow him to be defended by a Lawyer of his own choice and prayed for adjournment of the domestic enquiry. The Enquiry Officer however expressed his inability in the matter as the employer Bank had only the authority to consider such prayer as and when made to the said authority. The concerned workman accordingly was not given the reasonable opportunity of defending himself in the domestic enquiry by a representative of his choice and that he was forced to defend himself without getting any assistance from any expert in the matter, although the Presenting Officer of the management was the Law Officer of the employer Bank.

4. The Enquiry Officer on the conclusion of such domestic enquiry found the concerned workman guilty on the first two counts of the charge-sheet out of three counts not on any legal evidence but on surmises and conjectures. The report with findings of the Enquiry Officer being based on inadmissible and illegal evidence was not at all tenable. The disciplinary authority however on the basis of such report of the Enquiry Officer dismissed the concerned workman from service on 4th June, 1983 without applying his mind. On appeal the appellate authority also confirmed the dismissal order of the disciplinary authority. According to the workman concerned, the domestic enquiry was held by the Enquiry Officer without following the principle of natural justice and the employer Bank has not been justified in dismissing the workman concerned on the basis of the report of the Enquiry Officer which is based on surmises and conjectures and not on proper evidence. The dispute raised by the concerned workman over such dismissal from service resulted in the present reference.

5. The employer Bank in their written statement has denied the allegations of the concerned workman and has contended inter-alia that the concerned workman was given all reasonable opportunity of defending himself in the course of the domestic enquiry. The Enquiry Officer followed the principle of natural justice while holding the domestic enquiry. The Enquiry Officer completed the domestic enquiry after taking evidence from the side of the employer Bank and giving opportunity to the concerned workman to cross-examine the witnesses on the side of the employer Bank. The Enquiry Officer after completion of the domestic enquiry prepared his report on the basis of the evidence and materials in the record and submitted the same to the disciplinary authority, who on his turn accepted the said report on due consideration of the materials of the domestic enquiry. The charges of which the concerned workman was found guilty being grave, the disciplinary authority dismissed the concerned workman from service in accordance with the relevant clause of the bipartite settlement and on appeal the appellate authority also confirmed the action taken by the disciplinary authority against the concerned workman. The concerned workman is therefore not entitled to any relief.

6. In connection with the reference arising out of the dismissal of the workman on the basis of the domestic enquiry, preliminary issue with regard to the validity or otherwise of the domestic enquiry is required to be heard first and if the enquiry is found to be valid then the case is to be heard on merit. In this particular case the preliminary issue with regard to the validity of the domestic enquiry was heard first and by this Tribunal's order dated 16-12-1988, the domestic enquiry held against the concerned workman was found to be valid.

7. Both the concerned workman and the employer Bank have advanced their arguments with regard to the merit of the case on the basis of the materials on record. It is the well-settled principle of law that in a case under section 11A of the Industrial Disputes Act, 1947 this Tribunal is vested with all the powers to re-appraise the evidence regarding the



entire proceedings for the purpose of arriving at the decision whether the findings of the Enquiry Officer with regard to the alleged misconduct of the workman concerned have been substantiated by evidence and whether the punishment awarded has been proportionate to the mis-conduct proved.

8. In the instant case the employer Bank has examined four witnesses before the Enquiry Officer, MW-1 M.L. Chowdhury was the Chief Officer (Operations) of the employer Bank and MW-2 K. P. Seal was the Branch Manager of Raiganj Branch of the employer Bank. The other two witnesses namely MW-3 Baren Mallick and MW-4 Aloke Kr. Biswas were the mini deposit account holders in the Bank. The delinquent workman concerned however did not adduce any defence evidence. It appears from the proceedings of the domestic enquiry that the Enquiry Officer after the closure of the evidence on the side of the employer Bank, asked the delinquent workman concerned whether he would examine himself as witness and whether he would examine any other witness and that the delinquent answered in the negative. The proceedings however do not indicate that the Enquiry Officer took any statement of the delinquent workman concerned with reference to the evidence both oral and documentary showing his involvement, if any, in the mis-conduct as alleged in the charge-sheet.

9. The first count of the charge levelled against the workman concerned is that he unauthorisedly collected deposits under the mini-deposit agency of P. B. Sarkar and thereby engaged in a business outside the scope of his duties except with the written permission of the Bank and thus committed the mis-conduct under clause 19.5(a) of the bipartite settlement. Clause 19.5(a) of the bipartite settlement runs as follows :

"By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of the employee:

- (a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank."

10. The employer Bank has produced the evidence both oral and documentary to prove the aforesaid charge. The Enquiry Officer in his report has held that the aforesaid charge has been established against the concerned workman. According to the Enquiry Officer the admission of the concerned workman in Enquiry Officer's Ext. M-3 and Enquiry Officer's Ext. M-5 together with the oral evidence of the witnesses on the side of the management have proved the aforesaid charge. Enquiry Officer's Ext. M-3 undoubtedly written by the concerned workman reads as follows :

"With reference to your letter dated the 7th June I Sri Amallesh Chandra Kar stating below the facts which were come out.

1. From today (7th day of June, 1980) I have got no relation with Mini-deposit accounts as well as of any collection Agents.
2. That in past these irregularities like deposits/untopdating the accounts of Minideposit holder (public) I was solely responsible for which I am very much shocked and appolozized.

11. The relevant portion of Enquiry Officer's Ext. M-5 (workman's letter dated 31-10-1980) which was also written by the concerned workman in response to employer Bank's letter dated 12th September, 1980 (Enquiry Officer's Ext. M-4) runs as follows :

"It is well aware to you that since my transfer at Raiganj Branch I had taken keen and active role in the mobilising deposit of our Bank and had been successful in achieving a good deposit to the tune of Rs. 3 (three) Lakhs for our Bank in the form saving Fixed and other deposit. To tap the lower income group of people with whom I had and still have good relation and this personal relation together with confidence have also helped

much to the Agent to Mini-depositors to collect and swell the Mini deposit Fund. I am in no way directly connected myself as an agent of Mini-deposit. However at any stage of duties, if there lies any law on my part for not arranging the deposit of money collected under Mini-deposit by unemployed young-man and a relative used to work time to time under mini-deposit Agent and if any irregularities or deficit any less amount deposited by him I assure you to make good the loss of the Bank at the very earliest opportunity.

As regards my role as a direct collector of Mini-deposit, I firmly confirm that I have never acted as Mini-deposit Agent. Rather I helped not only A.C.A. No. 3 but also helped other A.C.As to collect deposit from the Mini-depositors. The only thing I had to do was to influence the Mini-depositors for mobilising our deposit. I had no ulterior motive behind this and as such I lament for the lapses."

12. Enquiry Officer's Ext. M-3 and Ext. M-5 only indicate that because of his personal good relation with some members of public he helped the Bank in getting more deposits from the said public in the form of fixed deposits and mini-deposits and that for mobilising the mini-deposits through the Agent appointed for the purpose he had some relation with some public who became the mini deposit accounts holders and also with the collection agents for that purpose. This particular admission both in the Enquiry Officer's Ext. M-3 and Ext. M-5 however does not indicate that the concerned workman engaged in any trade or business outside the scope of his duties.

13. There is nothing in evidence to show that the concerned workman by his such personal good relation with the intending depositors and by his relation with the collection agents of the Bank used to earn some money and thereby engaged in any trade or business outside the scope of his duties. MW-1 M. L. Chowdhury's evidence in the domestic enquiry and his report (Enquiry Officer's Ext. M-2) do not indicate that he had any personal knowledge about the fact that the concerned workman used to collect the mini-deposits as sub-agent of the collection agent or on behalf of the collection agent. It appears from the evidence of MW-1 M. L. Chowdhury and his report (Enquiry Officer's Ext. M-2) that the employer Bank received some complaints from the accounts holders whose names have been mentioned in Enquiry Officer's Ext. M-2 and that from the said complaints and from the letter of the workman (Enquiry Officer's Ext. M-3) he came to the conclusion that the concerned workman engaged in the business of collecting mini-deposits like the collection agent and that he did not deposit such amount in the Bank. The evidence of MW-2 K. P. Seal Manager of the Raiganj Branch of the employer Bank before the Enquiry Officer also does not indicate that he has got any personal knowledge about the collection of mini-deposits by the concerned workman. It appears that he also learnt from the complaints made by some mini-deposit account holders that the concerned workman used to collect mini-deposits. I have gone through his evidence in this respect and it appears that this MW-2 has admitted in his deposition that the Authorised Collection Agent (A.C.A.) Shri P. B. Sarkar granted the receipts to the depositors and that the said agent used to deposit money alongwith the weekly chart of collection in the Bank from the accounts holders as per mini-deposit collection rules. Some complaint letters like Enquiry Officer's Ext. M-7, M-11 to M-15 were produced before the Enquiry Officer but curiously enough none of the aforesaid complainants has been examined by the employer Bank and the delinquent concerned workman was not given the opportunity to cross-examine the said complainants about their aforesaid complaints. In the circumstances complaints like Enquiry Officer's Ext. M-7, Ext. M-11 to Ext. M-15 have lost evidentiary value and cannot be relied on in coming to any decision.

14. The Enquiry Officer however has relied on the said complaints, although the authors of such complaints have not been brought on the witness box and arrived at the finding about the complicity of the concerned workmen in

collecting the deposits from the public. It may be mentioned here that the MW-1's report (Enquiry Officer's Ext. M-2) also contains names of some deposit holders who lodged the complaints before the Bank. None of the said deposit holders has also been examined. So their statement before the MW-2 who prepared his report (Enquiry Officer's Ext. M-2) on the basis of their statement have also no evidentiary value as the delinquent could not get any opportunity to cross-examine the said complainants.

15. The employer Bank has however examined MW-3 Baren Malik and MW-4 Alok Kumar Biswas who appear to be mini-deposit account holders. It is true that they have stated in their evidence that the concerned workman collected some deposits from them. But they have not stated how much amount was collected from each of them by the concerned workman. Mr. Biswas appearing for the concerned workman has submitted that the employer Bank has procured the evidence of the aforesaid two persons who never lodged any complaint before the Bank in connection with their mini-deposit accounts. It appears from the materials in the record that MW-3 Baren Malik and MW-4 Alok Kumar Biswas never lodged any complaint either written or oral before the employer Bank. Be that as it may, it appears that they hold some accounts with the Bank and they have deposed that the concerned workman collected some money from them. It however appears from their evidence that they got the receipts signed by the Agent P. B. Sarkar and there is no documentary evidence to show that the concerned workman collected money from them. Even if it be assumed for the sake of argument, by accepting their oral evidence that the concerned workman collected money from them for the purpose of mini-deposit then that fact alone does not establish that the concerned workman engaged in any trade or business outside the scope of his duties. The concerned workman's letter (Enquiry Officer's Ext. M-5) has clearly indicated that the concerned workman as an employee of the Bank mobilised the deposits including the mini deposits so that the Bank's deposits may be increased for the good business of the Bank itself. It is not unlikely that the Bank employees by exercising their good personal relation with the members of the public would help the mobilisation of the deposits for the Bank's benefit.

16. I have given due consideration to the materials in the record and on re-appraisal of the entire evidence I do not find that the concerned workman engaged in any trade or business outside the scope of his duties by mobilising the deposits and thereby committed the misconduct as enjoined in clause 19.5 (a) of the bipartite settlement. Enquiry Officer was therefore not justified in arriving at the finding that of the charges.

17. The second count of the charge is that the amount collected by the concerned workman from the mini-deposit account holders was not deposited in the respective accounts by the concerned workman nor through the agent for the purpose and that the total of such amount as detected stood at Rs. 49,796 and that the concerned workman tried to misappropriate the same.

18. The charge itself shows that the concerned workman tried to misappropriate the said amount indicating thereby that he actually did not misappropriate the same. The Enquiry Officer in his report has stated that the amount of Rs. 49,796 as mentioned in the charge ought to have been 41,692 as shown in Enquiry Officer's Ext. M-10 (list of defalcated amount in mini-deposit). It appears from Enquiry Officer's Ext. M-10 that the total deficit was Rs. 41,692 and that out of the same Rs. 30,446 was recovered leaving the amount of Rs. 11,246 as un-recovered. The said list Enquiry Officer's Ext. M-10 does not indicate when the said list was prepared and when the amount of Rs. 30,446 was recovered. If the said amount was recovered before the charge-sheet was given then the entire charge showing the amount of Rs. 49,796 as the deficit money is materially defective and prejudicial to the concerned workman. Be that as it may, it has already been found that excepting the evidence of MW-3 Baren Malik and MW-4 Alok Kumar Biswas there is no other evidence to show that the concerned workman collected the mini deposits from the mini-deposit accounts holders or from any public. It has already

been stated that the employer Bank has not produced any receipt showing that the concerned workman collected any mini-deposit under his signature. Rather the evidence as adduced before the Enquiry Officer shows that receipts for the collection of the mini-deposits were given under the signature of the Agent P. B. Sarkar. P. B. Sarkar has not been examined before the Enquiry Officer. The evidence of MW-1 and MW-2 does not establish that the concerned workman collected money from the mini-deposit account holders or from any public for their deposit with the Bank.

19. It is true that MW-3 Baren Malik and MW-4 Alok Kumar Biswas have stated in their evidence before the Enquiry Officer that the concerned workman collected money from them. Curiously enough they have not stated in their evidence how much money the concerned workman collected from each of them and when. The concerned workman while cross-examining the said witnesses has denied his collection of any money from them. Be that as it may, even if it be assumed for the sake of argument that the concerned workman collected money from them then the said simple fact would not establish that the concerned workman either misappropriated or tried to misappropriate that money unless it is proved by the Bank's ledger and the concerned pass books that the said collected money was not deposited with the Bank. It may be, although not a finding on evidence; that MW-3 and MW-4 might have given some money to the concerned workman because of their good personal relation with him for giving it to the mini deposit agent for their deposit with the Bank.

20. The employer Bank has not given evidence through any of its employee that the concerned workman used to deposit mini deposit money with the Bank. Rather the materials in the record go to show that the mini-deposit agent used to deposit the money with the Bank. In the circumstances it cannot be held without any material evidence that the concerned workman who collected the money from MW-3 and MW-4 according to their evidence, either misappropriated the said amount or tried to misappropriate the same. The employer Bank has not produced the connected ledger and the pass books with regard to the accounts of MW-3 and MW-4 to show that the money collected from the said deposit holders was not actually deposited with the Bank. It has already been stated that MW-3 and MW-4 have not stated in their evidence that how much amount was collected by the concerned workman from them. Their evidence has indicated that they used to get receipts under the signature of the Agent P. B. Sarkar. It is not their evidence that they never gave any money to the Agent himself. Enquiry Officer's Ext. M-10 shows that Rs. 1,830 was the amount of loss in respect of the account of MW-4 Alok Kumar Biswas and that Rs. 2,156 was the amount of loss in respect of the two accounts of MW-3 Baren Malik. The employer Bank has not shown by production of the ledger and the concerned pass books of the aforesaid two witnesses and by giving evidence of those two witnesses as to the actual amount said to have been given by them to the concerned workman, that the aforesaid amounts of loss occurred due to any action or in-action on the part of the workman concerned. It has already been stated that besides MW-3 and MW-4 who however did not lodge any complaint before the Bank, the employer Bank did not examine any actual complainant of the complainants like Enquiry Officer's Ext. M-7 and Exts. M-11 to M-15.

21. It appears that the Enquiry Officer has relied on Internal Auditor's Report (Enquiry Officer's Ext. M-8) given by Mr. S. R. Ghosh while finding the concerned workman guilty of the charges. Mr. S. R. Ghosh, the author of the said report has not been brought on the witness-box before the Enquiry Officer and the concerned workman was not given any opportunity to cross-examine the said internal Auditor with reference to his report. So the said report (Enquiry Officer's Ext. M-8) practically got no evidentiary value. The said report has also been compiled on the basis of the complaints received by the Bank. The said report does not indicate that the Internal Auditor has found the complicity of the concerned workman in collecting the mini-deposit money and in not depositing the same in the

Bank from any reliable source of the Bank. It has already been stated that the employer Bank has not produced the Bank records to show before the Enquiry Officer, what amount, from whom the concerned workman collected and did not deposit with the Bank.

22. I have given due consideration to all the materials in the record specially with reference to the evidence as given by the management. I have duly considered also the admission of the concerned workman in Enquiry Officer's Ext. M-3 and Ext. M-5. On due consideration of the same I find that the employer Bank has not been able to establish also the second count of the charge as to the attempt to the mis-appropriation of any money by the concerned workman.

23. As regards the third count of the charge on delinquent's absence without leave, the Enquiry Officer did not find the workman concerned guilty of that charge. On consideration of the materials in the record I also find that the management could not establish the third count of the charge as well.

24. In the result the action of the employer Bank in dismissing the service of the concerned workman with effect from 4th June, 1983 is found to be unjustified and such dismissal is set aside. The concerned workman be reinstated in service if he has not already reached the age of superannuation and be given the back wages with all service benefits.

24. In the result the action of the employer Bank in dismissing the service of the concerned workman with effect from 4th June, 1983 is found to be unjustified and such dismissal is set aside. The concerned workman be reinstated in service if he has not already reached the age of superannuation and be given the back wages with all service benefits.

This is my Award.  
Dated, Calcutta,  
The 8th March, 1989.

Sd/-  
SUKUMAR CHAKRAVARTY, Presiding Officer  
[No. L-12012/281/84-D. II(A)]

नई दिल्ली, ३० मार्च, १९८९

का. अ. ७९२.—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा १७ के अनुसूच में, केन्द्रीय सरकार बैंक ऑफ़ बड़ोदा के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुसूच में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को २३-३-८९ को प्राप्त हुआ था।

New Delhi, the 30th March, 1989

S.O. 792.—In pursuance of section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government on 23rd March, 1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT,

JABALPUR (M.P.)

Case No. CGIT/LC(R)(111)/1988

#### PARTIES :

Employers in relation to the management of Bank of Baroda, Maharana Pratap Nagar, Bhopal (M.P.)

and their workman Shri Atmaram Kumar S/o Shri J. P. Kumay Gali No. 3, House No. 13, Gadi Adda, Juni Indore (M.P.)

#### APPEARANCES :

For Workman—Shri P. N. Soni.

For Management—Shri P. K. Basantani, Acting Manager.  
INDUSTRY : Banking DISTRICT : Indore (M.P.)

#### AWARD

Dated, the 31st January, 1989

By Notification No. L-12012/109/88-D. II(A) dated 9th October, 1988 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal, for adjudication :—

“Whether the action of the management of Bank of Baroda in terminating the services of Shri Atmaram Kumau is justified? If not to what relief is the workman entitled?”

2. Parties instead of filing their respective statement of claims filed a compromise settlement duly arrived at between them which is signed by the workmen concerned, Shri Atmaram Kumayu and his representative Shri P. N. Soni. On behalf of the Bank it is signed by the Regional Manager. Both the parties have verified the settlement on 16-1-1989, terms of which are as under :—

1. That Mr. Atmaram Kumayu will not claim any back wages for the period he had worked and for the period thereafter till the date of his regular part time appointment on half wages as applicable to the sub-staff cadre of the Bank at the lowest level.
2. That Mr. Atmaram Kumayu will be appointed as a regular part time sub-staff on half wages in sub-staff cadre with effect from 1st January, 1989 or the date when the court will approve this mutual settlement whichever is later.
3. That Mr. Kumayu will be appointed as regular part time Peon-Cum-Farrash on half wages in sub-staff cadre and will be confirmed from the first day of his appointment.
4. That Mr. Kumayu will be absorbed on full time regular sub-staff as Peon-Cum-Frash within one year from his date of appointment or whenever any vacancy of full time sub-staff arises whichever is earlier.
5. That Mr. Kumayu agree with the aforesaid terms and conditions in his full and final settlement of all claims.

3. I have gone through the above terms and conditions of settlement and I am satisfied that the terms of settlement are fair, reasonable and in the interest of the workman. I therefore record my award in terms of the aforementioned settlement and make no order as to costs.

V. S. YADAV, Presiding Officer

[No. L-12012/109/88-D. II(A)]

का. अ. ७९३.—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) के धारा १७ के अनुसूच में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ़ इंडिया के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुसूच में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को २७-३-८९ को प्राप्त हुआ था।

S.O. 793.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the

industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on 27-3-89.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R)(91)/1987.

#### PARTIES :

Employers in relation to the management of Central Bank of India, Indira Colony, Civil Lines, Sagar (M.P.) and their workman Shri Niranjan Singh Kaurav S/o Shri Raghav Kaurav C/o The President, M.P. Bank Employees Association, Punjab National Bank, Nagpur Road, Jabalpur (M.P.).

#### APPEARANCES :

For Workman—Shri P. N. Sharma.

For Management—Shri S. Aggarwal.

INDUSTRY : Banking

DISTRICT : Sagar (M.P.)

#### AWARD

Dated the 12th September, 1988

By Notification No. L-12012/457/86-D. II(A) dated 26th June, 1987 Central Government in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication :—

“Whether the action of the management of Central Bank of India, Sagar, in terminating the services of Shri Niranjan Singh Kaurav w.e.f. 1-9-85 is justified? If not, to what relief is the workman concerned entitled?”

2. The case of the workman is that he was employed by the Non-aplicant Bank, the Central Bank of India, at Chargaon Gotatoria Branch from 24-11-1984 and worked in this Branch till 12-3-1985 on daily wages at the rate Rs. 25 per day. He was paid on debit cash voucher. Thereafter he worked on Chawarpatha Branch of the said Bank, C.B.I. Branch from 10-4-85 till 31-8-85 and he was paid at the rate Rs. 25 per day as before. But this time he was paid by way of credit in his Savings Bank Account and from 1-7-85 till 31-8-85 he was paid in the name of pooran Lal Nauriya by debit voucher.

3. When he joined at Chawarpatha he was given artificial break before joining on 10-4-1985 in order to circumvent the law and his payment in the name of Pooranlal Nauriya was also in order to circumvent the law. In the circumstances he completed 253 days of service for the purpose of S. 25F of the I.D. Act. His appointment was on a permanent vacancy. Therefore he was deemed to be a probationer for the purpose of various awards. Manager Shri G. S. Thakur and Head Cashier Shri O. P. Shukla had forced him to give in writing that he had not served in the Central Bank of India any time earlier when he joined at Chawarpatha Branch, in order to circumvent the law and therefore he had reported the matter to the police and other Bank Authority. The Bank document will show that he has worked for the aforesaid period but he has not been given a notice or retrenchment compensation as per provision of I.D. Act. He is, therefore, entitled to be reinstated with full bSck wages.

4. On his termination one Shri Hardayal was given appointment.

5. The case of the management is that he worked at Chawarpatha Branch only for 29 days in the calendar year 1984 from 26-11-84 to 31-12-84 and thereafter he worked for 58 days in the calendar year 1985 from 1-1-1985 to

12-3-85. Thus he worked for a total period of 87 days at Chawarpatha Branch and thereafter he was never engaged in that Branch. During the said period he had worked as a temporary peon on daily wages.

6. It is emphatically denied that he was orally asked by the Bank to join Chawarpatha Branch are independent. Therefore the Manager of Chargaon could not give such a direction. In fact, the workman has himself got the appointment on the false declaration that he had not worked in any other Branch of the Central Bank of India. The workman had only worked as a temporary peon on daily wages for 57 days only between 10-4-85 to 15-6-85 on the dates mentioned in the written statement. It is also denied that the payment was made to him by crediting in his account or he was given payment in the name of Pooranlal Nauriya. In fact, from 17-6-85 to 10-8-85 and from 19-8-85 to 31-8-85 one Shri Suraj Prasad Sen had actually worked as a temporary peon in Chawarpatha Branch. Similarly Shri Pooranlal Nauriya had worked from 12-8-85 to 17-8-85 as a temporary peon and they were paid accordingly. All other allegations of the workman not being true are denied.

6A. The point for consideration before me is whether the termination of the workman is justified. If so, to what relief is he entitled? In this regard I find that the workman Shri Niranjan Singh Kaurav has given his own statement and proved only two documents Ex. W/1 and Ex. W/2. Other documents of which photo copies have been filed are not proved by any mode of evidence since it appears parties relied on the admitted facts in the pleadings.

7. I have already reproduced the pleadings of the parties. According to the workman at Chargaon Branch he worked continuously from 24-11-84 to 12-3-85 on daily wages and at Chawarpatha Branch he worked from 10-4-85 till 31-8-85 on daily wages at the rate Rs. 25 per day. Question arises whether the appointment of the workman in two different branches of the Bank will be treated as service under the same employer.

8. Shri Niranjan Singh Kaurav, workman concerned, gave his own statement on oath as WW1 and stated that he was appointed as Peon in Chargaon Gotatoria Branch of the Central Bank of India on 24-11-1984 and worked there till 12th March, 1985. His services were terminated with effect from 13-3-1985. Again he was appointed in another Branch, Chawarpatha Branch, by the Manager from 10-4-1985 and worked there till 31-8-1985. In cross-examination he denied the version of the management that he worked in Chargaon Gotatoria Branch only for 87 days and in Chawarpatha Branch only for 57 days with break. On behalf of the management no oral evidence has been adduced.

9. Thus even if the version of the workman himself is taken to be true it is crystal clear that he was employed at the above mentioned branches for temporary period for a particular tenure. As the Branch Managers were different at these places the employers were different each time. Neither there was one employer nor was the employment continued. As such the period of employment at one Branch cannot be clubbed with that of other branches where he was subsequently employed. As such the provisions of the Sastri Award or Sec. 25F of the I.D. Act and the authorities relied on by the workman do not apply as he has not actually worked for 240 days or more with one employer.

10. Now the question arises whether the Bank has contravened the provisions of Section 25G and 25H of the I.D. Act, 1947. The relevant paras are as under :—

Section 25G : Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement, between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Section 25H. Re-employment of retrenched workmen.—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen (who are citizens of India) to offer themselves for re-employment, and such retrenched workman to offer themselves for re-employment and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.

11. The plea of the workman in his rejoinder dated 15-12-1987 is that he worked at Chargaon Branch from 26-11-1984 to 12-3-1985 (107 days) and he was appointed against permanent vacancy as he was the only peon in that Branch. On his termination from service another person Shri Hardayal was given appointment. He was not given any notice of termination. Assuming that he was found surplus in the branch he should have been offered employment after retrenchment as provided under the I. D. Act. His further plea is that Sundays and holidays fell during his above period of service cannot be excluded in counting the service period. His services were terminated with mala fide intention.

12. The workman concerned, Shri Niranjan Singh Kaurav (W.W. 1) in his statement on oath stated that when his services were terminated in Chargaon Branch another person named Hardayal Nai was appointed in his place. In Chawarpatha also in his place Prakash Kumar Naoria was appointed after his services were orally terminated. On the other hand the management did not examine any witness on its behalf to rebut the version of the workman. In rejoinder the management pleaded that it is totally false that there was any permanent vacancy at Chawarpatha Branch. It has been further pleaded that since the workman was working on temporary daily wages on day to day basis, the question of his termination could not arise and so the appointment of other persons as and when required by the Bank was perfectly legal. Therefore there is no question of unfair practice.

13. I have already reproduced above the pleadings of the parties and the statement on oath given by the workman to which the management did not adduce any oral evidence in rebuttal. It is a common ground that neither appointment letter was issued nor any termination order was given, further there is no denial on oath of the statement given by the workman that after his termination Shri Hardayal was not appointed at Chargaon Branch and Shri Prakash Kumar Naoria was not appointed at Chawarpatha Branch. The Bank in its written statement itself pleaded that the workman was engaged as a temporary peon by the Manager, Chawarpatha Branch from 10-4-1985 but on daily wages. In the absence of statement in rebuttal it is proved that the termination of the workman another person Shri Hardayal Nai was appointed in his place. If the work was there and after his termination it was necessary to appoint another man he should have been given a chance and provision of section 25G and 25H should have been complied with, the management should have maintained a register for such temporary workers and applied the principles of last come first go. As the management did not observe any of these provisions of the I. D. Act nor the provisions of Bipartite Settlement nor of Sastri Award the termination of the services of the workman after taking work from him for more than 100 days (including Sundays and Holidays) was illegal unjust and mala fide. I therefore answer the reference as under :

That the action of the management of Central Bank of India, Sagar, in terminating the services of Shri Niranjan Singh Kaurav w.e.f. 1-9-1985 is unjustified. He is entitled to be reinstated and regularised as Peon with effect from the date of award but without back wages. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-12012/457/86-D. II(A)]

N. K. VERMA, Desk Officer

नई दिल्ली, 30 मार्च, 1989

का.आ. 794 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राउरकेला स्टील प्लांट, राउरकेला और मै. ईस्टर्न माइनिंग कं., बारादुआर के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

New Delhi, the 30th March, 1989

S.O. 794.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Rourkela Steel Plant, Rourkela and M/s. Eastern Mining Co., Baraduar and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R)(59)/1983

#### PARTIES :

Employers in relation to the management of Rourkela Steel Plant, Rourkela and M/s Eastern Mining Company Baraduar and their workmen represented through the Chattisgarh Swatantra Mazdoor Union, Baraduar, P.O. Baraduar, Distt. Bilaspur (M.P.)

#### APPEARANCES :

For Workmen/Union—S/Shri P. S. Nair, Advocate and Beniram Sahu, Secretary of the Union.

For Management—J. S/Shri R. C. Srivastava, Advocate and G. Mishra for Rourkela Steel Plant.  
2. Shri H. N. Vyas, Advocate for M/s Eastern Mining Company, Contractor.

INDUSTRY : Dolomite Mining DISTRICT : Bilaspur (M.P.)

#### AWARD

Dated, 21st March, 1989

In exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government has referred the following dispute to this Tribunal for adjudication vide Notification No. L-29011/67/83-D. III(B) dated 1st November, 1983 :—

“Whether the demands of the workmen of Ispat Dolomite Quarry, Baraduar as represented by Chhatisgarh Swatantra Mazdoor Union, Baraduar (Annexure) in relation to M/s. Eastern Mining Company, contractor and Rourkela Steel Plant, Rourkela are justified? If so, to what relief are the workmen entitled?”

#### ANNEXURE

Demands incorporated in the Union's letter dated 31-5-83. Demand No. 1:—Workers should be paid minimum wages as prescribed by the Government of India and less payments so far made should be paid as arrears of wages.

Demand No. 2 :—All the female members should be taken as P. C. Miners from the date of commencement of work as in the case of M/s. Chandrakant Harishankar.

Demand No. 3 :—The workers should be given holiday with wages in respect of 4 festivals in a year as in the case of M.P. State Mining Corporation.

Demand No. 4 :—All the workers should be paid arrears in respect of all their legal dues arising out of E.L., M.L., National Holidays and injury treatment.

Demand No. 5 :—The dues arising out of E.L., M.L. and National Holidays be paid to the workers as arrears.

Demand No. 6 :—All the workers should be given safety equipments regularly and immediately.

Demand No. 7 :—A full time qualified M.B.B.S. Doctor should be posted for the Mines and Baraudar Siding and necessary arrangements should be made for proper supply of medicines and Ambulance for the use of workers and their family members.

Demand No. 8 :—Wagon loaders and workers engaged in the Truck such as drivers, helpers and loaders be given overtime at the rate double the normal wages for the work done by them beyond 8 hrs. Previous dues of the drivers should be cleared.

Demand No. 9 :—Arrangements should be made for making necessary advance payments to the workers.

Demand No. 10 :—The mine workers should be given all facilities for blasting. The workers should be given compensation when the mine is flooded with water.

Demand No. 11 :—Payment to the weekly paid workers be made monthly. They should be paid for 30 days in a month and back wages from 1-1-1983 onwards should be paid as arrears.

Demand No. 12 :—Workers coming from distant places should be given cycle allowance.

Demand No. 13 :—The workers who stay at the work-spot and do work during lunch hours should be paid allowance for their meals etc.

Demand No. 14 :—The M/s. E.M.C. is not appointing the Blasters which are statutory staff for P.E. i.e. RSP. The Union may take up the matter separately with R.S.P.

Demand No. 15 :—The workers who do more than their prescribed work should be given extra allowance.

Demand No. 16 :—All the arrears accounts of Sardars should be cleared.

Demand No. 17 :—The labour who loads wagon should be supplied with Fork.

Demand No. 18 :—House rent to the siding workers be increased suitably and payment made immediately.

Demand No. 19 :—Wages of the Gang loaders at the siding should be increased.

Demand No. 20 :—The siding workers should not be laid off and in case they were to be laid off full wages should be paid.

Demand No. 21 :—Dependents of a worker who retires or dies while in service should be given employment. At least one member from very such family should be provided with employment.

Demand No. 22 :—P. F. slips be given to the workers and in case the management has not remitted the amount in the concerned office, it should be remitted.

Demand No. 23 :—Material for construction of house should be provided to the workers immediately.

Demand No. 24 :—Rest shelter, canteen cecche and water etc. should be provided properly.

Demand No. 25 :—Due to go-slow tactics in the previous week, the loaders could not earn their minimum wages. They should be compensated and paid arrears.

Demand No. 26 :—The Truck loader who have not been given registration and the workers who have not been given attendance card should be provided with measurement attendance card immediately.

Demand No. 27 :—All the staff and workers should be provided with attendance card, wage.

Demand No. 28 :—Workers should be provided with Jaggery, cloth, soap etc. free of cost.

Demand No. 29 :—All workers should be provided with instruments for work. Old instruments should be replaced.

Demand No. 30 :—Arrangements should be made for free education of worker's children.

Demand No. 31 :—Workers/staff should be given food grain advance, festival advance every year.

Demand No. 32 :—All the employees of Mines No. 5 of M/s. Lal & Co. who are now without employment should be provided employment in Khamaria Mine.

Demand No. 33 :—Management should co-operate in running the Consumer Cooperative Society.

## 2. Demands contained in the Union's letter dated 5-8-83.

Demand No. 1 :—The workers who had been stopped from work during 14-6-83 to 4-8-83 should be paid their wages with compensations for the said period.

Demand No. 2 :—Workers/staff should be given 13.5 per cent wage increase and arrears of wages and other dues should be paid simultaneously with compensation for delayed payments.

## 3. Demand contained in the Union's letter dated 23-8-83 :

The workers and staff of Eastern Mining Company and Lal & Company are working in Dolomite Industry and Dolomite is being used for Steel Plant. As such the workers are serving the Steel Plant through the above Companies. As such payment to the workers and staff of the above companies should be made as per Steel Wage Board Award. The 33 demands indicated in the demand notice dated 31-5-83 and the demands indicated in the demand notice dated 5-8-83, be fulfilled. The workers and staff were compelled to go on strike as their demands were not considered and as such they should be paid their wages for the period of strike.

2. The brief history of the case is narrated in the term of Settlement dated 23-1-1981. It is a common ground that M.P. State Mining Corporation Ltd. were appointed as Agent in 1975 by the Rourkela Steel Plant (hereinafter referred respectively as the Contractor and RSP) for doing the mining dolomite at the spot at Baraudar. The appointment was initially for five years with effect from 21-10-1975 but the contract was actually formalised in May 1977 for a period of five years commencing from 1-5-1977 with the stipulation of renewing the contract for another terms of five years if actually agreed upon. The Contractor in turn engaged M/s Chandrakant Harishankar Raipur as Contractor for doing this mining work and their contract work commenced from January 1976. The contractor terminated the contract before the expiry of the stipulated period with the result that the Contractor M/s. Chandrakant Harishankar had to retrench all the workers engaged by them with effect from 6-11-80. This was resented by the two Unions functioning in Dolomite Quarry at Baraudar Area and they raised an industrial dispute in this behalf vide their joint representation dated 14-10-1980. This representation of the Unions also contained a threat of strike to commence from 1-11-1980. Assistant Labour Commissioner (Central) Raipur intervened in the matter and after various sittings a Settlement dated 23-11-1981 was arrived at to which the Contractor refused to be a party and did not participate. It was further decided that the Union will call off the strike with effect from 27-1-1981 and the Contractor will lift out the lock out simultaneously. Further it is a common ground that the Unions

continued to agitate and raise various demands and threatened that in the event of non-fulfilment of their demand workers will go on strike. Ultimately there was a Settlement (Ex. M/32) between the Contractor and the two Unions on 28-3-1983 as under :—

“(1) The management agreed to enhance the present prevailing wage rates of workers engaged in the mines, Truck, Railway siding, Crusher at the rate 13.5 from the date of 2-9-82. As per notification of government of India. The revised rates shall be paid to workers from 4-4-83.

(2) The unions pressed for making payment of arrears accruing from the said clause, immediately but managements expressed their financial difficulties and assured to make payment on 25th, 26th June 83 at latest.”

But there is a tug of war between all parties concerned and the Union first adopted a go-slow strike and thereafter a complete strike paralysing the work completely. On the other hand, management and the Contractor declared lock out which was subsequently lifted but the strike continued till contract of the Contractor came to an end on expiration of the terms of contract on 27-1-1984.

3. It is also not disputed that on the dispute being raised by the Union represented by Chattisgarh Swatantra Mazdoor Union, Baraduar (hereinafter called the Union) Ministry of Labour referred 33 demands raised by the Union vide their letter dated 31st May, 1983, 2 demands raised vide Union's letter dated 5-8-1983 and another demand contained in the Union's letter dated 23-8-1983, for adjudication to this Tribunal. During adjudication before this Tribunal Union vide their application dated 4-5-1987 (allowed the same day by this Tribunal) with drew all their demands excepting the following which only, remains for adjudication by this Tribunal :—

#### A. Demands incorporated in Union's letter dated 31-5-1983.

Demand No. 4—All the workers should be paid arrears in respect of all their legal dues arising out of E.L., M.L., National Holidays and injury treatment.

Demand No. 5—The dues arising out of E.L., M.D. and National Holidays be paid to the workers as arrears.

#### B. Demands contained in the Union's letter dated 5-8-83.

Demand No. 1—The workers who had been stopped from work during 14-6-83 to 4-8-83 should be paid their wages with compensation for the said period.

Demand No. 2—Workers/staff should be given 13.5% wage increase and arrears of wages and other dues should be paid simultaneously with compensation for delayed payments.

#### C. Demand contained in the Union's letter dated 23-8-83.

The workers and staff of Eastern Mining Company and Lal and Company are working in Dolomite Industry and Dolomite is being used for Steel Plant. As such the workers are serving the Steel Plant through the above Companies. As such payment to the workers and staff of the above companies should be made as per Steel Wage Board Award. The 33 demands indicated in the demand notice dated 31-5-83 and the demands indicated in the demand notice dated 5-8-83 be fulfilled. The workers and staff were compelled to go on strike as their demands were not considered and as such they should be paid their wages for the period of strike.

Reference is therefore now confined only to the above mentioned demands.

4. The case of the Union stated briefly is that all the workers being employees of RSP are entitled to the wages and other facilities under the Steel Wage Board as is being paid to the employees of Steel Plant from the very beginning.

This legitimate demand has been rejected without any justification, RSP is agency of Central Government and RSP workers are directly under the control and supervision and guidance of Central Government and their officers. Workers were illegally stopped from work by the management from 14-6-83 to 4-8-83 and they have not been paid their wages. Management had agreed to give increase and arrears of 13.5%. This Agreement has not been fulfilled. Workers were compelled to go on strike because of illegal attitude of the management. That there was a Conciliation Settlement between the RSP and the Union on 23-1-1981 and RSP had agreed to departmentalise workers but not only the RSP but also the Contractors have refused to implement their Settlement. Therefore they are entitled to the relief as per their demands and settlement.

5. The case of the RSP is that the management of RSP is not an employer in respect of labourers employed by the Contractors who was an independent employer. Therefore RSP is not at all a necessary party. The employees of the Contractors do not come under the Steel Wage Board Award and they are governed by the Contract Labour (Regulated and Abolition) Act. In any case, demands of the Union is neither legal, proper nor justified.

6. The case of the Contractors (M/s. EMC) stated briefly is that the demands contained in Union's letter dated 23-8-83 calls for Steel Wage Board Wages even against M/s. Lal and Company who is not a party in this reference. The contract of the Contractors at Baraduar had expired on 27-1-1984 and as such the establishment closed. The reference is there not maintainable and bad in law. The demand-wise plea of the Contractors is as under :—

#### Demands No. 4 and 5 dated 31-5-83 :—

All the workers are paid their legitimate dues as and when due. If any specific instance is pointed out it is willing to do the needful.

#### Demand No. 1 and 2 of Union's letter dated 5-8-83 :

The employees had struck work illegally with effect from 13-6-83 and has started indulging in violence and gross indiscipline. Since the employees had resorted to an illegal strike management was bound to declare a temporary closure. This temporary closure was lifted with effect from 4-8-83 but the workers did not resume their duties, hence they are not entitled to payment of wages or compensation. That on 2-6-83 the drivers resorted to go-slow strike so that the proper despatch are not made and financial crisis created. The Truck loaders and wagon loaders also followed suit with Truck Drivers from 6-6-83 and 8-6-83 respectively, as a result of which despatch were paralysed completely. On 11-6-83 about 500 workers gheraoed the site office and intimidate and abused officers of the contractors. They indulged in stone throwing resulting in damage to the office and injury to some of the officers. Ultimately, they illegally struck work with effect from 13-6-83. In the above back ground question of payment of wages for the period 14-6-83 to 4-8-83 does not arise. Management is not in a position to bear additional burden on account of heavy losses.

#### Demand contained in Union's letter dated 23-8-83.

The Contractors carried on only mining of dolomite and transportation and loading into wagons. It is not a steel industry but separate wages have been fixed for this industry by the Government of India for such workers. It is not a steel industry and as such Steel Wage Board Award is not applicable to workers. There is no substance in this demand, specially in the case of Lal and Co. which is a separate identity and is not a party to this reference. Therefore the demand of the Union deserves to be rejected.

7. My learned predecessor, Justice Shri K. K. Dube, confined the dispute to the following issues which with my reasons and findings are as under :—

#### ISSUES

(1) Whether the demands made from 1 and 2 are justified ?



- (2) If so, to what relief are the workman entitled ?
- (3) Whether the demands contained in the Union's letter dated 5-8-83 are justified ? If so, to what relief are the workers entitled ?
- (4) Whether the demands contained in the Union's letter dated 22-8-1983 is justified ? If so, to what relief are the workmen entitled ?

#### FINDINGS :

8. Issue Nos. 1 to 4—The demands of the Union is against the RSP as well as against the Contractors. I will take up question whether the RSP or the Contractors are liable at the appropriate stage. Before that I will consider whether the demands of the Union referred for adjudication to this Tribunal is justified. If so, to what relief they are entitled. Then the question will arise as to what and from whom Union is entitled to relief, if any.

9. The burden of proving that their demands are justified is on the Union. I will take up the demand No. 4 and 5 dated 31-5-1983. The Union has not filed any detail of their claim statement nor any documents in support of their claim. Only three witnesses Manohar Tandon, a Munshi of the Contractor (WW-1), Dhaniram a Labourer of the Contractor on affidavit (WW-2) and Rohit another worker (WW-3) have been examined and they have been cross-examined by the RSP and the Contractors. Manohar Tandon (WW-1) has stated that employees were entitled to E.L., Medical/Maternity Leave, National Holidays, Injury treatment. In many other cases they were not given the benefits. Workers are entitled to the said wages. On the basis of such a vague statement without giving any particular instances the name of individual workman, the name of the kind of leave pertaining to particular individual and the nature of injury and the period during which the injury was treated or person was confined to hospital are conspicuous by their absence in their statement. In his cross-examination he has admitted that their wages were paid by the Contractors in the presence of RSP authority, the attendance registers were marked by him but general attendance of works and leave etc. was also recorded by the RSP. Therefore his plea is that he has no knowledge about the leave, working hours, holidays and maternity leave of the workers of the Contractors and he has no record of the employees showing which employee was granted how much leave and when. However, in this personal case, he has admitted that he used to apply for leave to the Steel Authority who forward the application with their recommendations to the Contractors who used to sanction the same. This was the procedure applied in relation to all the workers but he has no such record.

10. Next witness is Dhaniram (WW-2). In his written affidavit i.e. examination-in-chief Dhaniram has not spoken a word specifically regarding these demands. But in his cross-examination he has admitted that Chandrakant Harishanker, Contractor, had given him retrenchment compensation. He has further in para No. 2 of his cross-examination has admitted that he used to take leave whenever required for 2-3 days. He used to apply to the Mining Mate for leave but he does not remember their name. He has further admitted that he got the payment for E.L. and Mining Mate of RSP paid us the amount of E.L. Thus from his statement one thing is clearly proved (he used the word 'us') that they were paid for unavailed E.L.

11. Third witness is Rohit (WW-3). In his examination-in-chief he has stated that we did not get wages for the period of E.L., Maternity Leave and Medical Leave. For him Maternity leave is out of question. Regarding E.L. he is belied by the Union's own witness Dhaniram (WW-2). In his examination-in-chief itself he has admitted that in case of emergency we did not come to do the work therefore we used to apply or leave and such occasions occurred about 10 to 15 days per year. In his cross-examination he has admitted that after the contract of Chandrakant Harishanker was over, contractor paid us the retrenchment compensation. In the next paragraph of his cross-examination he admitted that they never complained to RSP about the less payment or any other authority except the Union. From this it is ap-

parent that neither he nor any other worker made any complaint to any authority in power regarding less payment on any score like E.L., M.L., National Holidays and Injury Treatment.

12. It cannot be disputed that E.L., M.L., National Holidays and Injury treatment can never be claimed if though due but not availed. From the evidence referred above there is not an iota of evidence that any of the workman did not avail E.L., M.L., and National Holidays. Thus therein no evidence that any of the workmen who did not avail for the same were not paid. Injury treatment and Maternity benefits are available to those employees who are victim of the same but there is no evidence who were the victims and if so they were not paid for it. Thus from the evidence of the Union even this vague demand is not proved at all.

13. On the other hand, Contractor has examined Shri R. N. Jha Mines Incharge. He has stated on oath that the workers of the Contractors were given statutory leave like E.L. one days on each 20 working days, Maternity Leave, National Holidays, 4-5 local holidays. According to him, these are paid holidays and any leave remaining in the account of workers he was paid for those days. He has further stated on oath that from 1981 to 1984 he received no complaint from the workers or the Union regarding non-payment for these holidays. Nothing is brought out in his cross-examination to discredit his testimony.

14. On the other hand, RSP has examined its Mining Engineer, Shri Om Prakash Shankerlal Agrawal (MW-1). He has stated that we never received any complaint from the contract labourers that they were being paid less. However, in his cross-examination he has stated that there was no leave called as such the Medical Leave. In case of injury a workman was treated medically while at the same time during his treatment he was getting wages without working. Similarly, Shri Ram Deo Dubey, Manager of RSP has stated that the labourers engaged by the EMC were paid wages by them @ agreed between them. No one made any complaint to him that the labourers engaged were paid less wages.

15. Thus the evidence led by RSP and Contractor in rebuttal that nothing remains due against the RSP or the Contractor in regard to demands No. 4 and 5 of the Union. Thus these demands are not proved and I hold and decide these issues accordingly against the Union.

16. Next I will take up demands No. 1 and 2 contained in the Union's letter dated 5-8-1983. I will first take up demand No. 1. At the very outset learned Counsel for the Union has contended and laid great stress that the terms of reference in the form it has been made is conclusive and it is not open either to the management or to the Tribunal to say that the workmen were not stopped from working. This matter has been concluded by the terms of reference itself. Therefore this Tribunal is bound to hold that the workmen were stopped from working by the opposite party. It has been further contended that for this reason this Tribunal cannot enter into the question whether there was stoppage or not had whether the stoppage was justified or not. Therefore the pleading of the management in this regard cannot be gone into whether there was strike or not and if so whether it was justified or not. It has been further contended that the company illegally declared a lock out on 14-6-83 and lifted it only on 5-8-1983. The management is, therefore, bound to pay wages for this period under the Payment of Wages Act and since wages are held up for nearly five years Union is entitled to compensation at ten times of the wages as provided under the Payment of Wages Act. To my mind, this contention is devoid of any substance. It is the demand of the Union which has been not only incorporated in the reference but the Ministry of Labour as a Schedule to the reference incorporating various demands of the Union contained in their various letters have also reproduced as Annexure to the Schedule. Both are to say whether the demands of the Union are justified. It is, therefore, the Union to prove the justification of the demands. This means that they have to prove that there were workers who have been stopped from working during 14-6-83 to 4-8-83. If they prove it they are entitled to it and if they fail to prove it they are not entitled to it. Thus the justification of the



demands has to be gone into on the basis of pleadings of the parties. Therefore it is a mere jugglery of words to say that justification or non-justification of stoppage of work for the said period cannot be considered or gone into. This contention is also fallacious on another ground as well.

17. Last portion of Demand No. 3 contained in Union's letter dated 23-8-83 says "the demands indicated in the demand notice dated 5-8-83 be fulfilled". The workers and staff were compelled to go on strike as their demands were not considered and as such they should be paid their wages for the period of strike. "Thus this portion of the demand itself refers to the justification of the strike and says that" the workers and staff were compelled to go on strike". Therefore they should be paid their wages for the period of strike. This means in other words the Union admits that if their demands and the strike was not justified then alone they can be disentitled to their wages for this period. I am, therefore, of the opinion that not only their wages for said period but also the justification of their strike can be considered and gone into in this reference and there is no question of this Tribunal travelling beyond reference on this score. I therefore proceed to examine the demands, their justification and justification, propriety and legality of strike.

18. In this regard RSP and the Contractors relied on documentary evidence Ex. M/1 to Ex. M/40 and oral evidence and the Union has only relied on oral evidence. I will first take up the documentary evidence of EMC which are Ex. M/2 to Ex. M/25. Ex. M/2 to Ex. M/5 are the appeals to truck loaders, truck drivers and truck helpers and the labourers and others to refrain from go-slow strike adopted by them. These appeals are from 7-6-83 to 10-6-83. This shows that the first truck drivers adopted the go-slow strike then truck loaders and other workmen of the contractors joined them by 10th June, 1983. Vide their letters dated 14-6-83 (Ex. M/8) Contractor informed the Assistant Labour Commissioner, Bilaspur about the situation and informed him that in such circumstances management had no alternative but to declare a temporary closure. The Contractor vide Ex. M/9 dated 14-6-83 sent a written complaint by their Mechanic Shri M. Prasad Sharma regarding threat and misbehaviour given to him by the loader and staff of the contractors. In such situation the Contractor issued an appeal dated 14-6-83 (Ex. M/11) not to resort to stoppage of work and public meeting and create tension. They even informed the police about the tense situation vide Ex. M/12 dated 13-6-83 and again to the Asstt. Labour Commissioner vide their letter dated 9-6-83 (Ex. M/13) about the stoppage of work on account of Union rivalry. Ex. M/14 is telegraph to the A.L.C. (C) Bilaspur. The management of the contractor vide Ex. M/15 dated 7-6-83 requested the President, Adarsh Shramik Sangh Baraduar to bring normalcy. A similar letter dated 6-6-83 (Ex. M/16) was again sent to the said Union requesting to lift the slow down strike. Same day police vide letter 6-6-83 (Ex. M/17) was informed that there is likelihood of breach of industrial peace and law and order, therefore they should take necessary action to maintain the peace. Vide their letter dated 4-6-83 management of the Contractor asked the other Union Chattisgarh Swatantra Mazdoor Union to defer their action so that they can mutually discuss the matter.

19. On 4-8-83 even the President of Adarsh Shramik Sangh vide their letter dated 4-6-83 complained regarding the truck loaders and said truck loaders are leaving half the load which is causing loss to the contractors. Management of the contractor again informed the Asstt. Labour Commissioner, Bilaspur regarding the situation vide their letter dated 3-6-83 (Ex. M/20) and issued a notice to certain workers on same day and sent a telegram to the A.L.C. (Ex. M/22) that the workers started slow-down strike dated 2-6-83. On 1-6-83 management of the contractor informed the police that Chattisgarh Swatantra Mazdoor Union has organised a meeting and taken drivers and helpers as a result they did not report on duty from 1-6-83. Similar letter was written to the management of RSP (Ex. M/24) dated 1-6-83. The above correspondence of the contractors i.e. M/s. FMC goes to show that first truck drivers, thereafter all other workers had stated the slow down strike with effect from 1-6-83 and later it turned into a complete strike. This is also

apparent from the ultimatum of strike given by Shri Beniram Sahu, Secretary of the Chattisgarh Swatantra Mazdoor Union dated 5-8-83 (Ex. M/30) and dated 31-5-83 (Ex. M/31).

20. Management of the RSP had also reported the matter of this illegal strike by the Chattisgarh Swatantra Mazdoor Union to the Collector Bilaspur vide letter dated 1-9-83 (Ex. M/35), to the police officer Incharge of Baraduar (Ex. M/36) dated 18-10-83 and 21-10-83 (Ex. M/37) again to the Collector vide their letter dated 14-10-83 (Ex. M/38), again to Police Officer vide their letter dated 30-11-83 (Ex. M/39) to arrange for security of persons and property and the fact that they are squatted outside the office, shouting slogans etc. A similar letter was sent to Office Incharge of Administration (Ex. M/40) dated 30-11-83. It is further goes to show that not only the contractor was suffering on account of the strike but also the management of RSP was compelled to seek help of the Bilaspur administration to control the law and order situation created by striking workers. Even the letters of the Secretary of the Union Ex. M/6 dated 30-8-83 goes to show that they were pressing for their demands from 5-5-83 and had threatened to go on strike vide his letter dated 23-8-83. In the light of the above documentary evidence, I will examine the oral evidence of parties.

21. Manohar Tandon (WW-1) though denied that any such appeals were issued by the contractor and the management but admitted having given strike notice Ex. M/6 and Ex. M/7. He has also admitted that it is during that time about six months from 14-6-83 that police force were posted at mines area of Baraduar town and he has further admitted at the end of his cross-examination that on 14-6-83 the work in the Baraduar Mine was discontinued. This admission proves that the work in the mine and the surface was completely stopped from 14-6-83. This fact is also admitted by Dhaniram (WW-2) and inasmuch as he says that the work of EMC was discontinued with effect from 14-6-83 because we had raised the demands. Further on he has admitted that they had all raised their demands jointly and he has no knowledge whether truck drivers had raised their demand in May 1983. In his cross-examination he described the conduct of the workers when he says we did not allow contractors to take the goods then alone the police had arrived. He further admits that when we did not allow to take them goods they did not pay our wages. He has further admitted that it is true that since we started obstructing the goods being taken out are still lying their in the mines which is about many tonnes of gitti. In the last page of his cross-examination he stated that "I had participated in the strike in Baraduar mines organised by the Chattisgarh Swatantra Mazdoor Union. I cannot give the date of strike but it is true that Government had declared the strike illegal in spite that we did not resume work. Truck drivers were also on strike."

22. Last witness is Rohit (WW-3). He has stated that from 14-6-1983 to 4-8-83 FMC had declared lock out and they went on strike from 5-8-83 for about two months and five days. Though he tried to deny that truck drivers and the clerical staff had started go-slow strike in May 1983 but he admitted that it is true that they had gone on strike for about two and a half months with effect from 5-8-83. He has also admitted that the material had accumulated at the site which is still lying there and the material was only loaded when the truck were plying. Ultimately truth came out from his mouth when at the end of his cross-examination he says that "In June he went on strike because Sahuji had asked them." This goes to show the real reason of the so called justification of the strike. No wonder Shri Beniram Sahu did not dare to enter the witness box to justify it

23. On the other hand, management of the contractor and the RSP examined Shri R. N. Jha (a witness of the contractor), Shri Ram Deo Dubey on behalf of the RSP. Shri R. N. Jha stated that from March 1983 Union leaders started problems by collecting workers and not allowing them to work. The demand of the Union was to departmentalise the workers. Three of the unions were creating problems from 30th May, 1983 on the instigation of the Union leader Shri Beniram Sahu. The quarry staff went on strike without giving strike notice of which correspondence are Ex. M/20 to Ex. M/24. After May 30, 1983 the situation in the mine became worse and they could not work. In April and May 1983, the percentage of transportation fell to a low level therefore from June 1983 police had to be posted to maintain

law and order. From 14-6-83 the workers completely stopped the work and thereafter no work was done. About 600 tonnes at the quarry site and about 300 tonnes at the railway siding, the material worth about 10 lacs, is still lying. Therefore the Government had to declare the strike illegal vide Notification (Ex. M/25) with effect from 1-11-83. Statement of Shri Ram Deo Dubey (MW-2) is also to the same effect that the Unions had created unrest from March 1983 and from 30-5-83 the quarry staff of the contractor went on strike and thereafter the work was completely stopped by them from 14-6-1983 and it was never resumed till 27-1-84 the date on which the contract of the contractor came to an end by efflux of time. Nothing material has been brought out in their cross-examination to discredit their testimony which is otherwise supported by the documentary evidence referred above.

24. From the above evidence, it is crystal clear that the truck drivers started slow down strike from 1-6-83, thereafter others also joined them. From 14-6-83 there was complete strike by the workers. Therefore the management of the contractor had declared temporary closure with effect from 14-6-83 to 4-8-83. The closure was lifted thereafter but strikers did not resume the work and continued to remain on strike till the contract of the contractors came to an end on 27-1-1984.

25. Not only the management of EMC but management of RSP had made complaint to the police and district administration vide Ex. M/35 to Ex. M/40. But the Union persisted in go slow strike and converted the same into a complete strike and declare indefinite strike from 5-8-1983 (Ex. M/30) on the basis of demand Notice dated 31-5-1983 and continued the strike as is apparent from Ex. M/7 dated 23-8-83. The record does not show that the Union had earlier give notice of strike. In the circumstances strike cannot said to be a justified one. Therefore this strike was in breach of contract with the management and cannot be justified under Sec. 23 and 24 of the Industrial Disputes Act, 1947.

26. The plea of the Union is that the management had also declared the lock out. Therefore the Union is entitled to their wages. In this regard, Sub-rule (4) of Rule 12 of the Industrial Employment (Standing Orders) Rules authorises the management that in the event of strike they may wholly or partially close down the establishment after giving a general notice to the employees. The record shows that management of EMC had given such a notice (Ex. M/11) dated 14-6-83, as such the temporary closure from 14-6-83 to 4-8-83 cannot said to be illegal or unjustified. Shri Beniram Sahu who not only sponsored the strike but also sponsored this reference himself and contested these proceedings did not due to enter the witness box to show and prove the justification and legality of their stand and the strike. It therefore raises an adverse inference. It is thus proved that it is not the contractor (EMC) 14-6-83 to 4-8-83 but in fact the workers contractor (EMC) or RSP who had stopped the work during 14-6-1983 to 4-8-1983 but in fact the workers themselves struck work. Therefore on the principle of no work no wages they are not entitled to wages or any compensation for the period they did no work and remained on strike. Therefore Demand No 1 dated 5-8-83 is not justified.

27. Demand No. 2.—Vide this demand Union has demanded increase of wages by 13.5 per cent and compensation on account of delayed payment. The basis of this demand is the Minutes of the meeting held on 28-3-1983 (Ex. M/32). Demand is not only made against the EMC but also against RSP on account of that since the EMC has not made the payment workers are entitled to the same from the principal employer i.e. the R.S.P. The RSP repelled this demand on the ground that they were not the party to the Minutes of Discussion dated 28-3-83 and the alleged increase of wages have been paid. I agree with the learned Counsel for RSP that they were not the party to this discussion. Therefore they are not liable for it.

28. The management of EMC has challenged this demand on various grounds. One of the ground is that the payment of increased wages has been made for the period upto their

employees worked. They are not entitled to any increase payment after they went on strike. I find the EMC has not produced any record of the payment being made. Therefore this plea cannot be accepted.

29. Comping to the enforceability and legality of Minutes of Meeting I find that Sub-rule (4) of Rule 58 of the Industrial Disputes (Central) Rules 1957 provides that a copy of the settlement is to be sent to various Central Government Labour Enforcement Officers. Since the record does not show that it was so sent therefore these minutes of meeting did not and cannot said to have achieved the status of settlement. It has also been pointed out that Dhaniram (W.W. 2) denied such a settlement and he also stated whether he received the increased amount or not in his pay packet he cannot say. But I find that in the same para he did say that he did not get the increased amount. He and Rohit (W.W. 3) stated that they did not get any increased amount. Therefore in the absence of anything by way of record on behalf of the EMC it cannot be said that the payment was made. The contention regarding enforceability etc. on the face of it, as put up, appears to be plausible but I am of the Opinion that the management should honour their commitment to their employees even it has not been ripened into a settlement specially looking to the fact that these minutes of discussions appear to have arrived in view of the Gazette of India (Extraordinary) Notification dated 2-9-82 (Ex. M/29) whereby rates of minimum wages were proposed to be increased by the Government of India, Ministry of Labour. This notification was to be published in the Gazette of India (Ex. M/29) and was to come into force on the date of publication in the Official Gazette, but unfortunately there is not an iota of evidence to show that when this notification was published and came into force. Therefore it appears that after the date of publication of this notification rates of minimum wages were revised as per minutes of discussion between the management of EMC and the workmen represented by Chattisgarh Swatantra Mazdoor Union and the Adarsh Shramik Sangh on 28-3-1983 whereby the revised rates were to be paid to the workers from 4-4-1983. Secondly these minutes of discussion (Ex. M/32) have been challenged on the ground that the said Unions and the workers are not entitled to the increased amount because they did not fulfil their part of their commitment and went on go-slow strike with effect from 2-6-83. Even go-slow strike amounts to partial cessation of work and is covered by the definition of strike as has been held in 1957-II-LLJ p. 55. It is true that from the evidence on record it is proved that the workmen of the EMC went on go-slow strike with effect from 2-6-83 and subsequently it was converted into a complete strike from 14-6-83 and continued till the contract of the EMC expired by efflux of time on 27-1-84. Therefore, to my mind, the workers of EMC are not entitled to any increase of wages with effect from 2-6-1983 onwards.

30. My attention has been drawn to the statement of Rohit (W.W. 3) who have stated "that it is true that we were to be paid the arrears from 28-3-83 to 4-4-83". On this basis the contention of the management is that without admitting the liability, the workers were only entitled to arrears with effect from 28-3-83 to 4-4-83 and nothing more. In this connection learned Counsel for the RSP and EMC have contended that neither in the pleading nor in their arguments the Union have stated anything to suggest as to from which date they were entitled to this increased amount. Even Mr. Beniram Sahu who had not only sponsored this reference but was also a party to Minutes of discussions (Ex. M/32) has not entered into witness box to say from which date the increased wages were to be paid. It is true, but I find that in the Minutes of Discussion dated 28-3-83 (Ex. M/32) there is a specific commitment that the revised rates shall be paid to the workers from 4-4-83. Therefore they are entitled to the revised rates from 4-4-1983 and Clause No. 2 of the commitment shows that the Union had pressed for making payment of arrears accruing from the said clause immediately but the management expressed their financial difficulty and assured to make payment by 25th, 26th June, 1983 at the latest. Therefore the second part of discussion goes to show that the workers were also offered arrears as stated by Rohit (W.W. 3) from 28-3-83 (the date of discussion) to 4-4-83, being the agreed date of enforcing the agreed increase, giving up any other claim of increased wages, if any. From the above, I am of the opinion that it is proved that as per

Minutes of Discussions dated 28-3-83 workers on roll engaged in mines, truck, railway siding crushers are entitled to increased wages at the rate of 13.5 per cent from 28-3-83 to 3-4-83 as arrears and thereafter from 4-4-83 increased wages @ 13.5 per cent are to be paid to the above class of workers who were on rolls of the management from 4-4-83 to 1-6-83. Increase wages @ 13.5 per cent is to be paid over and above what was already paid to them as pre-revised wages.

31. The Union also claimed compensation for late payment. Dhaniram (W.W. 2) in his statement has admitted that the work of EMC was discontinued (though according to him by the management) with effect from 14-6-83 because they had raised the demand and had made the demand jointly. He has further admitted that when we did not allow the contractors to take out the goods and it was then along that the police had arrived. He has also admitted that it is true that after we started obstructing the goods ever since they were lying there and are still not taken out of the mine. That it is true that many lacs tonnes of goods (gitti) still lying in the mine. This admission of his proves that during strike on account of the conduct of workers the management suffered heavy losses. Therefore to my mind, they are not entitled to any compensation for delayed payment. I hold and decide this issue accordingly.

32. Demand No. 3 contained in the Union's letter dated 23-8-83.—On this ground they demand the wages as per Steel Wage Board Award from EMC and Lal and Company. Union has also filed an application dated 3-10-1988 to issue notice to Lal and Co. to make them a party. It is opposed by the opposite party. On perusal of the reference, I find that the reference is in relation to M/s. Eastern Mining Co., a Contractor, and Rourkela Steel Plant saying whether the demand against them is justified. The reference nowhere mentions M/s. Lal and Co. Therefore to my mind that though the various demands dated 23-8-83 have been referred by the Ministry of Labour, but they are restricted in relation to M/s. Eastern Mining Co. and Rourkela Steel Plant alone. Therefore, this Tribunal cannot travel beyond the reference and make Lal and Company a party or consider any demand in relation to them. Such a contention raised above and hereinafter are repelled by the following authorities :—

River Transport Association Vs. Calcutta Shramik Union (1978 Lab. I.C. 1416—Calcutta H.C.); Workmen of B.I.C. Ltd. Vs. B.I.C. Ltd Judgment dated 29th October, 1964 given in Civil Appeal No. 473/64; M/s. I. T. Development Corporation Vs. Delhi Administration (1982 Lab. I.C. 1302).

The application is, therefore, rejected.

33. Now I proceed to examine the Demand dated 23-8-83. Last part of this demand relates to the demand dated 5-8-83. In this demand for wages for the strike period have been made. I have already considered the unjustifiability of the strike which was later declared illegal by the Government with effect from 8-11-83 vide Ex. M/25. Therefore they are not entitled to any wages for the strike period as claimed.

34. In the next demand dated 23-8-83 wages as per Steel Wage Board Award are claimed on the ground that the workers are serving the Steel Plant through the above Company. In this regard, contention of the Union is that the employees employed through the EMC and Lal and Company (I need not take up the case of Lal and Company as I have already held that there is no reference in relation to them) are the employees of principle employer i.e. Rourkela Steel Plant. Therefore they are entitled to the wages as per Steel Wage Board Award.

35. The management of RSP has pointed out that as stated by O.P.S. Agarwal (M.W. 1) and Shri R. D. Dubey (M.W. 2) it is proved that the Contractors i.e. EMC had in fact undertaken the work of raising, transportation of dolomite of specified grade and quantity and size that they were paid according to the terms of contract agreement (Ex. M/27). Manohar (W.W. 2), Dhaniram (W.W. 2) has also admitted that prior to 27-1-84 they were the employees of M/s. EMC. The so-called Settlement Ex. M/32

and Ex. M/1 were also between the contractors and the Union. This clearly goes to prove that M/s. EMC was an independent Contractor and the employer of these workers.

36. Union in Demand No. 5 has claimed the payment of wages according to the Steel Wage Board Award on the sole ground that these workers of EMC are working in dolomite industry and dolomite is used in Steel Plant. Therefore, they are entitled to wages as per Wage Board Award. On the other hand, it is urged that the fact that Manager, Assistant Manager and Welfare Officers etc. engaged by RSP in Baraduar Mines are the employees of the RSP as per requirement of Mines Act, Rules and Regulations, it does not mean that the workers of the Contractors are the workers of RSP. Therefore, their claim to the wages of Steel Wage Board Award is neither applicable to them nor their demand can said to be justified. There is no settlement or Award concerning the contract labours of EMC with them that they will get the Steel Wage Board Wages. The wages which are applicable to the contract labour are the wages under the Minimum Wages Act which from time to time are declared by the Government or as per settlement or an award. Admittedly there is no such settlement or award between EMC and the employees of EMC to pay them wages as per Steel Wage Board Award.

37. The management has relied on various documents to show that the workers were the employees of the EMC and they are not entitled to wages as per Steel Wage Board Award. They were only entitled to wages as per Minimum Wages Act or as per mutual Settlement and nothing more. In the alternative, the contention of the RSP and EMC is that this Tribunal cannot travel beyond the reference made to it to enquire whether the contractor workers are employees of the RSP. It has been pointed out in this regard that the Union and workers themselves claimed to be the employees of EMC and the principal employer RSP cannot be made liable for any such demand. It has been further pointed out that simply because Managers, Assistant Managers and other Welfare Officers are employees of RSP at Baraduar Mines as per the requirement of Mines Act Rules and Regulation and as per the statutory requirement the RSP cannot be deemed to be the employer of the employees of the contractors. It has also been pointed out that even witness of the Union Robit (W.W. 3) has admitted that EMC was getting the boulders broken and they were being paid by them piece rated. They were working Groupwise and familywise and the Contractors' supervisors used to measure their quantity of work and paid for their work. Shri R. N. Jha (a witness of the contractor) stated that the disciplinary action against the workers were taken by the Company and not at the direction of the officers of the RSP. Evidence points out that the workers were appointed by EMC and their work was measured by employees of contractors. Clause No. 31 to 46 of the Agreement (Ex. M/27) also provides that the workers employed by the Contractors will be deemed to be their employees and as such relationship of master and servant existed between the contractors and their employees. Further various statutory compliance was made the responsibility of the Contractors. Even in the reference, contract labour is referred as the workers and staff of Eastern Mining Company. It is the case of the Union itself that RSP had obtained licence and it is not specifically denied that the contractor held the licence under the Contract Labour (Regulation and Abolition) Act. Therefore the plea that Contractors workers are entitled to the same wages as that of RSP employees is fallacious and is not borne out from the evidence on record. Therefore the demand cannot said to be correct and justified.

38. Learned Counsel for the Union contended that the contractors were employed by RSP for dolomite mining on behalf of the RSP who held the lease and were owner of the mines. Dolomite so obtained was used by the RSP. Admittedly Managers, Assistants, Clerks, Blasters and other officers were the employees of the RSP and the workmen were employed within their knowledge and permission as has been admitted by Shri O.P.S. Agarwal (M.W. 1). Provisions of Mines Act, Rules and Regulations and all other statutory provisions were enforced by the RSP. All statutory registers under Mines Act and Rules were maintained by RSP who had the complete control. A settlement dated 23-1-81 was also arrived at by the RSP to departmentalise these workers. Therefore the amount of control exercised by the RSP goes to show that

the workmen were the employees of the RSP and that contractors were merely a device to defeat the legitimate claim of the workers. The Tribunal can therefore lift the veil and see that the real employer is the RSP.

39. In support of the above contention learned Counsel for the Union relied on the following cases :—

Dharangadhra Chemical Works Vs. State of Saurashtra (AIR 1957 SC 264) case of salt workers in the run of Kach; Diwan Mohiuddin Sahib Vs. United Bidi Workers (AIR 1966 SC 370) case of bidi workers and M. G. Bidi Works Vs. Union of India (LIC 1974 p. 1237) another case of bidi workers; Silver Jubilee Tailor House Vs. Chief Inspector (LIC 1974 p. 133) a case of Trilor.

The above authorities relied on by the Union are distinguishable and are not applicable to the facts of the present case, as is apparent from the case of Dharangadhra Chemical Works (supra) wherein it has been held that the broad distinction between the workmen and the independent contractor lies in this that while the former agrees himself to work and later agrees to get other person to work..... Question whether relationship between the parties, the one is between the employer and employee or between master and servant, is a pure question of fact. On facts, the case No. MP 1059/86 (Steel Authority of India Ltd. Bhilai Steel Plant Vs. Presiding Officer and others dated 28-1-87 is on all fours with the facts of the present case wherein Hon'ble Judges of the M.P. High Court have laid down that :—

"In the agreement the petitioner is called the employer and the other party the contractor. Description of the petitioner as employer has been taken by the Tribunal to be that the petitioner is employer of the workmen. Here the word "Employer" has been used in the loose sense to mean that the petitioner is the person who has used the services of the contractor and this will not show that thereby the petitioner has become the employer of the workmen employed by the contractor for carrying out mining operations in the Mine. Documents annexed to the agreement show that the work shall be carried out in strict conformity with the provisions of the Indian Mines Act, 1952, and payment to the workers shall be made as per provisions of payment of Wages Act, 1968. The contractor shall frame their own Standing Orders for its establishment and get it certified. The suitable housing accommodation, internal sanitation and other amenities to the workers and the contractor would abide by the provisions of Contract Labour (Regulation and Abolition) Act 1970, and the rules framed thereunder. However, the company i.e. the petitioner shall provide medical facilities on payment of charges and shall also provide fringe benefits i.e. profit sharing bonus, wages for national holiday, leave with wages as per Mines Act and other fringe benefits. It is evidence that the workmen are to be employed the contractors appointed from time to time. May be the same set of workers used to be engaged by the different contractor from time to time as that was the labour force available in the Area."

Hon'ble High Court further after considering various provisions of the Mines Act. etc. came to the conclusion that—

"Therefore it is clear that the workmen engaged by the contractor in Danitola Quartzite Mines were not the employees of the petitioner except for certain specified purposes like payment of Provident Fund. Merely because there were certain statutory obligations cast on the petitioner regarding working of the mines in respect of its workers, would not make it employer of the workmen engaged by the contractor in working the mine."

In this regard reliance was placed by the Hon'ble High Court of M.P. on the cases of Workmen of Food Corporation of India Vs. M/s. Food Corporation of India (AIR 1985 SC 670); Dock Labour Board Vs. Stevedores Association (AIR 1970 SC 1626). Case of Hussainbhai Vs. Alath Factory Tezhilali Union (AIR 1978 SC 1410) was also distinguished. This

judgment of the Hon'ble High Court is binding on this Tribunal.

40. From the evidence referred to above and the law laid down by the Hon'ble High Court of M.P. it clearly goes to show that this is a case of an independent contractor i.e. Eastern Mining Company whose contract is evidenced by Ex. M/26 to Ex. M/28. Relevant conditions by way of Clauses No. 31 to 42 of the Contract (Ex. M/27) dated 4th June, 1981 were incorporated in the contract between the RSP and the EMC. The object of these Clauses No. 31 to 42 appears to be that the contractors were to ensure payment of wages of its workmen and fulfil all other terms of contract including the statutory duties. Clause (b) of S. 2 of the Contract Labour (Regulation and Abolition) Act 1970 lays down that the workmen shall be deemed to be the employee as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer". Clause (c) of S. 2 of the Act defines the Contractor—

"Contractor". in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor."

Clause (b) of S. 2 of the Act defines "wages" shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936).

41. In this connection, this pertinent to note that Ex. M/71, Ex. M/7, Ex. M/30, Ex. M/31 and Ex. M/32 and item no. 14 of the demand notice dated 5-8-83, the demand of the Union were made only against the EMC Contractor and not against the principal employer i.e. the RSP, because the Union and their workmen were aware that they are the employees of EMC and their wages are governed under the Contract Labour (Regulation and Abolition) 1970 and they are only entitled to wages under the Payment of Wages Act.

42. On the other hand, payment to the workers of the employees of the Steel Authority i.e. the RSP are made as per the recommendation, if accepted, of the JBCCI (Ex. M/33 and Ex. M/34). It is the case of the Union itself that RSP had obtained licence under the Contract Labour (Regulation and Abolition) Act. In their pleading the Union has not challenged that the contractor EMC did not possess a licence under the Contract Labour (Regulation and Abolition) Act. Therefore the plea that contract labourers are entitled to the same wages as the employees of RSP is fallacious and is not borne out from the evidence on record. From the above, it is clear that the workmen engaged by the Contractor EMC are their employees and cannot be treated to be the employees of the principal employer i.e. the RSP. Therefore they are only entitled to the wages as revised from time to time under the Payment of Wages Act or as per contract or settlement. Therefore they are not entitled to wages as prescribed under the Wage Board Award for workers of Steel Industry.

43. Consequently I answer the issues and reference as under :—

That the demands of the workmen of Ispat Dolomite Quarry, Baraduar as represented by Chattisgarh Swatantra Mazdoor Union, Baraduar (Annexure) in relation to the Eastern Mining Company, Contractor and Rourkela Steel Plant, Rourkela, are not justified except to the extent mentioned below :—

Workers of EMC (Eastern Mining Company) who were on their Roll engaged in mines, truck, railway siding, crushers are entitled to increased wages at the rate of 13.5 per cent from 28-3-83 to 3-4-83 as arrears and thereafter from 4-4-83 to 1-6-83 increased wages @ 13.5 per cent over and above what was already paid to them as pre-revised wages. No order as to costs.

[No. L-29011/67/83-D.III(B)]

V. S. YADAV, Presiding Officer

नई दिल्ली, 31 मार्च 1989

justified? If not, what relief is the workman entitled to?"

In C.R. No. 174/87

का.आ. 795.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माइन्स लि., आर्गाऊम पोस्ट, के. जी. एफ. के प्रबन्धन में सम्बद्ध नियोक्तों और उनके कार्यकर्ता के बीच, अनुबन्ध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-89 को प्राप्त हुआ था।

New Delhi, the 31st March, 1989

S.O. 795.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd. Oorgaum Post, K.G.F. and their workmen, which was received by the Central Government on 28-3-1989.

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated 20th day of March, 1989

## PRESENT :

Shri B. N. Jalge, B.A. (Hons.), LL.B. Presiding Officer.  
Central Reference No 162, 174/87 and 1/88

I Party in C.R. No. 162/87

Shri Doss Rep. by The President Bharat Gold Mines Association 545, Near Oorgaum, Punjabi Line Oorgaum Post, K.G.F.

I Party in C.R. No. 174/87

Shri K. Ramachandra Reddy S/o Konda Reddy, Nediam Nediam Post, Pallepuri Taluk, Changanpur District, Tamil Nadu.

I Party in C.R. 1/88

Shri R. Mani. S/o Sri Rajee, Door No. 21, 'M' Block, Champion Reef, K.G.F.

Vs. ' '

The II Party in All the above 3 cases

The Chairman-cum-Managing Director M/s. Bharat Gold Mines Limited Oorgaum Post, K.G.F. (Karnataka)

## APPEARANCES :

For the I party Shri V. Gopala Gowda, Advocate In all the 3 cases.

For the II party Shri K. J. Shetty, Advocate In all the 3 cases.

## AWARD

In C.R. No. 162/87

By exercising its powers under Section 10(1)(d) of the I. D. Act, the Government of India, Ministry of Labour made the present reference on the following point of dispute by its Order No. L-43012/18/87-L.III(B) dated 16-10-1987.

## Point of Reference

"Whether the dismissal of services of Shri Doss, an Ex. Surface employee of Champion Reef Mine of M/s. B.G.M.L., K.G.F. with effect from 17th April, 1986 by the management of M/s. Bharat Gold Mines Limited, Oorgaum Post, K.G.F. is proper, legal and

By exercising its powers under Section 10(1)(d) of the I. D. Act, the Government of India, Ministry of Labour made the preference reference on the following point of dispute by its Order No. L-43012/22/87-D.III (B) dated 27-11-1987.

## Point of Reference

"Whether the dismissal of Shri K. Ramachandra Reddy, T. No. 2217 Ex. General Labourer, C.R. Mine from the services with effect from 17-4-1986 by the management of M/s. Bharat Gold Mines Limited, Oorgaum Post, K.G.F. is proper and justified? If not, what relief is the workman entitled to?"

In C.R. No. 1/88

By exercising its powers under Section 10(1)(d) of the I. D. Act, the Government of India, Ministry of Labour made the present reference on the following point of dispute by its Order No. L-43012/23/87-D.III (B) dated 7-12-1987.

## Point of Reference

"Whether the dismissal of Shri R. Mani, T. No. 144109, Ex. General Labourer, C.R. Mines from the services with effect from 17-4-86 by the management of M/s. Bharat Gold Mines Limited, Oorgaum Post, K.G.F. is proper and justified. If not, what relief is the workman entitled to?"

4. In C.R. No. 162/87, an order has been passed on 2-3-1988 to the effect that the questions of fact and law involved in all these three cases are the same and therefore all of them are clubbed together and that there will be common evidence and a common award.

5. In all these three cases, the claim statements of the I party workmen are similar. Their contentions, in brief, are as follows.

They were appointed in the II party and when they were working, a false show-cause notice dated 19-7-84 was issued to them. It was alleged that they had indulged in unauthorised possession of the property belonging to the company or that they were carrying on activity not connected with the employer's work, without previous sanction and that they were guilty of theft of employer's property. They were also chargesheeted for offences under Sections 6 and 13 of the Mines Act read with Section 379 I.P.C. before the J.N.P.C., K.G.F. After due trial they were acquitted on 19-12-1986. Being not satisfied with their explanation, they were asked to attend the enquiry on 13-8-1984. They submitted that the enquiry was not necessary since they were chargesheeted by the police. On 20-8-84, they requested the management to furnish them the copies of documentary, such as F.I.R., chargesheet and Standing Orders. By a letter dated 6-9-84, they requested for the copies of the statement of Deputy Superintendent of Police, Superintendent of Police and other policemen. By a letter dated 4-10-84, they stated that it was not possible to send them the said copies. Thereafter, a show of an enquiry was held. The Enquiry Officer did not follow the principles of natural justice. List of witnesses was not given to them. Procedure of enquiry was not explained. The Enquiry Officer acted as a prosecutor and a judge. Copies of proceedings were not given. Several questions were not allowed in the cross-examination. Without intimating the adjourned date, the enquiry was adjourned several times. Thereafter, the enquiry was held behind their back. The date of hearing fixed on 20-5-1985 was not intimated. Similarly the date of enquiry fixed on 29-8-85 was not intimated. The Enquiry Officer has recorded the statements of the witnesses behind their back. Thereafter a second show-cause notice dated 26-3-1986 was given to them, proposing the punishment of dismissal. They sent their reply in April 1986. The Deputy General Manager then passed an order of dismissal dated 17-4-1986. The findings of the

Enquiry Officer are perverse. The Deputy General Manager has passed the order of dismissal without applying his mind. An appeal was filed. The appeal has been rejected without reasons. Mr Doss has not committed any misconduct. He has put in 33 years of service. The punishment of dismissal is disproportionate to the alleged act of misconduct. The provisions of Section 11-A of the I. D. Act require to be invoked. Then an industrial dispute was raised. The management adopted an adamant view. The conciliation failed. They have been victimised. The II party has indulged in unfair labour practice. The order of dismissal may be set aside and they may be reinstated with all the consequential benefits.

6. The II party management has filed its counter statement and inter alia, it is contended as follows.

A show cause notice dated 19-7-84 was issued to them. It was based on a complaint received from the Sub-Inspector of Police, Champion Reef Police Station, K.G.F. They had submitted their explanation. There is no bar for enquiry because of the acquittal by the J.M.F.C. K.G.F. and the domestic enquiry held by the management. The explanations given by these were not satisfactory. Their representation dated 20-8-84 was considered and a letter dated 5-10-85 was sent stating that F.I.R. had not been received and that copies of the statement of witnesses and F.I.R. will be given to them. They were informed that copy of the chargesheet filed by the police was not available. A copy of the standing order was given to them. They were informed that the alleged act of misconduct had taken place within the premises of the employer and that the employer had the right to hold the domestic enquiry. The enquiry was conducted in accordance with the principles of the natural justice. The allegations made regarding the validity of the domestic enquiry are not correct. A second show cause notice was given to them. Thereafter the orders of dismissal were passed. The Enquiry Officer has submitted his findings after taking into consideration all the material evidence. The Enquiry Officer has given proper findings. The disciplinary authority had applied its mind and found no mitigating or extenuating circumstances and thereafter they have been dismissed from service. The appeal preferred by them has been examined by the Appellate authority and finding that there was no reason to interfere, they were rejected. The misconduct committed by them is severe in nature and they deserve the punishment of dismissal. The other allegations made by them are not correct.

7. A preliminary issue was raised whether the management proves that it has held the domestic enquiry in accordance with law.

8. On recording evidence and hearing the parties, a considered order dated 12-10-88 was passed and it had been held that the domestic enquiry conducted by the management is in accordance with law.

9. Thereafter, the parties were called upon to adduce further evidence on rest of the points and argue.

10. The management has examined one witness and got marked Exs. M-1 to M-30.

11. All the three workmen have been examined.

12. The three workmen have been recalled and further examined after the domestic enquiry has been held to be valid.

13. The parties have been heard.

14. My findings on the order of references are that the management of the Bharat Gold Mines Limited, Oorannu, Post, K.G.F. was justified in dismissing from service the three workmen viz. (1) Shri Doss an Ex-surface employee of Champion Reef Mine with effect from 17-4-1986, (2) Shri K. Ramachandra Reddy, T. No. 2217 Ex. General Labourer, C.R. Mine with effect from 17-4-1986 and (3) Shri R. Mani, T. No. 144109, Ex. General Labourer, C.R. Mines with effect from 17-4-1986 and that they are not entitled to any relief.

## REASONS

15. One of the contention of the workmen is that the findings of the Enquiry Officer are perverse and that they are not based on any legal evidence.

16. Perversity has two tests. The first test is the whether the findings of the Enquiry Officer are not supported by any legal evidence at all and the second one is that whether on the basis of the material placed on record, any reasonable person could have arrived at the findings complained of.

16. The only witness examined by the management is the Enquiry Officer MW-1 Stephen. The management endeavours to prove the enquiry proceedings Ex. M-13 by the evidence of MW-1 Stephen. In the enquiry MW-1 Stephen has examined several witnesses such as PW-10 Lingamaiah (to distinguish the witnesses examined by the Enquiry Officer, they have been shown PW-1, PW-2 etc.). PW-1 A. K. Vivekananda, PW-3 G. Varadappa, PW-4 Venkatappa, PW-5 A. Pitchaimuttu, PW-6 Jayapal, PW-7 Dankanachari, PW-8 Dwarkanath, the Chemist. There is no case pleaded by the workman that any part of the oral evidence of any of these witnesses was not admissible in evidence. On perusal of their evidence, it would be obvious that the Enquiry Officer has properly admitted the oral evidence given by them.

17. The document relied upon in the enquiry is only the complaint of the Sub-Inspector of Police, Champion Reef Police Station sent to the B.G.M.L. Exs. M-1 to M-3 are the chargesheets issued to these three workmen. Ex. M-4, M-5 and M-6 are the copies of the complaints enclosed to the chargesheets. The workmen have signed at Exs. M-1 (a) M-2 (a) and M-3 (a) to show that they have received the chargesheets and the copies of the complaints. The original of Exs. M-4 to M-6 is at Ex. M-30. Ex. M-30 dated 8-7-84 shows that the Sub-Inspector of Police, Champion Reef Police Station sent the same to the Manager of the B.G.M.L. and informed him that on 7-7-84 at about 9.15 p.m. six persons shown below were extracting and purifying gold bearing mud in a room adjacent to the provision shop of Mustak Ahmad and that mining sponge gold weighing 6 grams and 400 milligrams valued at Rs. 1,080 was found in 'G' Block, Champion Reef area and that they were guilty of theft and that they had no permit to deal in the same and that a case had been registered for offences under Sections 6 and 13 of the Karnataka Mines Act read with Section 379 I.P.C. and that the matter was under investigation. The names of the six persons are as follows :

- (1) Mustak Ahmad
- (2) Doss S/o Anthony T. No. 1431
- (3) Mani S/o Rajee T. No. 144109
- (4) K. Ramachandra Reddy S/o Konda Reddy T. No. 2217
- (5) Raji S/o Arul
- (6) Abubaker S/o Koya.

It has been further shown that accused No. 2 Doss, Accused No. 3 Mani and Accused No. 4 Ramachandra Reddy were mining employees of the Champion Reef Mines. Their ticket numbers are also shown as 1431, 144109 and 2217 respectively. Based on the said information, the II party management has then issued show cause notices as per Ex. M-1 to M-3. They are dated 19-7-84. In brief, the show-cause notices (chargesheets) show that these workmen were charged for carrying on work of activity not connected with the employer's work without previous sanction in the premises of the employer, that they were also guilty of theft of employer's property, in as much as they were found in a room adjacent to the provision shop of Mustak Ahmad at about 9.15 p.m. and that it was found extraction and purification of gold was indulged in and gold weighing 6 grams and 400 milligrams was found with their Exs. M-7 and M-8 are the explanations given by Mani and Ramachandra Reddy. They are identical. They contended that the allegations made against them were false that the case has been fabricated against them by the police in collusion with their enemies that the case is yet to be decided by the criminal court that pending the trial they cannot reveal their defence and that the proceedings



may be dropped. In the explanation given by Doss, Ex. M-9, he has contended that on 7-7-84 after night meals, he had gone to a nearby mundry shop at 'G' block to get cigarettes, there at he saw some people and then the Sub-Inspector of Police asked him to put his signature as a witness since he was the president of the line panchayat. But he asked him as to why he should sign and then the Sub-Inspector asked him to get into the van along with others and further told him that the matter will be explained in the Police Station. He then states in Ex. M-9 that after he was taken to the police station, the police officers went outside, but they did not turn up and that they came only on the next morning and that in the next morning he also saw the manager of the Champion Reef Mines and the Chief Security Officer of the BGML and that the manager identified him and told the police that he was working on the surface in the engineering department. He further adds that then he asked the Sub-Inspector of Police as to why he had been detained but the Sub-Inspector told him that all the police officers the manager and the Chief Security Officer were discussing and he will be allowed to go within a short time but that later he learnt that the police had put up a case against him with others for no fault of him. He has requested the management to withdraw the show-cause notice issued to him. Since the management was not satisfied with these explanations, the notice of enquiry were issued to them as per Exs. M-10 to M-12.

18. Ex. M-13, the enquiry proceedings recorded by MW-1 Stephen shows that then he commenced the enquiry. The proceedings of the first day in Ex. M-13 show that the three workmen pleaded not guilty and they sought for the assistance of one Shri Arthur, Joint Secretary of the B.G.M.L. workers union. There is no dispute on the point that they were given the said assistance. The witnesses examined for the management are PW-1 G. Varadappa No. 279 police constable Champion Reef Police Station (2) PW-2 Venkatappa No. 150 Police constable CRPS. (PW-3 G. Jayapal, Mahazar witness (4) PW-4 Pitchamuttu, mahazar witness, (5) PW-5 A. K. Vivekananda, P.S.I. CRPS (6) PW-6 M. S. Mahesh, PW-1 Marikuppam police station, PW-7 Dankanachari, a goldsmith PW-8 Muniswamy, Clerk of the time office, CR Mines, PW-9 Dwarkanath, the Assayer and Chemist, and PW-10 Lingamaiah the Deputy Superintendent of Police.

19. The two mahazar witnesses PW-3 Jayapal and PW-4 Pitchamuttu have not supported the allegations made by the management in the chargesheet. The learned counsel for the I party strongly contended that the Enquiry Officer ought to have preferred the evidence of PW-3 Jayapal and PW-4 Pitchamuttu, the mahazar witnesses to that of the evidence of the Police Officers and the policemen. The said contention is not available and it would be evident as to why the said evidence cannot be preferred, when the evidence of all the witnesses is analysed and appreciated in proper perspective.

20. The gist of the evidence of PW-1 Varadappa PW-2 Venkatappa, PW-5 Vivekananda, PW-6 Mahesh and PW-10 Lingamaiah, the police officers and the police constables is that on 7-7-84 at about 9.15 p.m. the Deputy Superintendent of Police PW-10 Lingamaiah had come credible information that in a room adjacent to the shop of Mustak Ahmad some illegal activity was going on and all of them along with the panches went and raided the said premises in 'G' Block of Champion Reef area and found that there were six persons there at and that purification of sponge gold and business in gold were going on. The I party workmen have produced the judgement in C.C. No. 1724 of 1984 of the Court of the Principal J.M.F.C. B.G.F. It is Ex. M-4. It shows that all these persons shown in the complaints at Ex. M-4 to M-6 were the accused in that case and that they had been charged for offences under Sections 6 and 13 of the Karna'aka Mines Act and Section 379 of the I.P.C. All the accused have been acquitted and the order passed by the learned magistrate regarding the property is as follows :

M.Gs. 1 to 3 each of Rs. 500, 156 and 100 respectively and M.Gs. 9 and 10 six coins of 2 Ps. and Five coins of 1 Ps. respectively are ordered to be confiscated to the State. M.Os. 5 and 13 shall be returned to the BGML, authorities K.G.F. The remaining articles are ordered to be destroyed.

21. After the Enquiry Officer concluded the enquiry and sent his findings as per Ex. M-14, the management found that the three workmen were guilty of the charges that dismissal is a proper punishment and therefore the second show-cause notices were issued as per Ex. M-15 to M-17. The workmen have given their explanation as per Exs. M-18 to M-20. The explanations given by S. Mani and Ramachandra Reddy are identical. These two workmen have contended that the evidence produced by the management is neither consistent nor cogent, that no misconduct has been established against them and that they are not liable for any punishment. In the explanation given by Doss, Ex. M-20, it has been stated that the evidence produced by the management is inconsistent, that no misconduct has been proved against him and that the proceedings against him may be set aside. The management was not convinced by the explanations given by them and consequently the orders of dismissal have been passed as per Exs. M-21 to M-25. The three workmen have been then preferred appeals as per Ex. M-24, Ex. M-25 and Ex. M-26. The appeals of Mani, Ex. M-24 and Ramachandra Reddy Ex. M-25 are identical. The main contentions raised by them are that the case put forth against them is a concocted one, that the enquiry has not been valid and that they are entitled to the relief claimed. The contention raised in his appeal at Ex. M-26 by the workman Doss are that the findings of the Enquiry Officer are not sustainable that the evidence produced by the management was not trustworthy and that no misconduct has been established against him. The management has thereafter considered their appeals and rejected as per Ex. M-27 to Ex. M-29. From the time that these three workmen gave their explanations as per Exs. M-4 to M-6 in July 1984 till the time they filed their appeals in October 1986, their contention throughout is that they are not guilty of any misconduct that the evidence adduced against them is not trustworthy and that the report of the Enquiry Officer is not sustainable. They have never entertained any plea that they had any connection with the property seized by the police in the said premises and produced before the JMFC KGF. In the criminal trial also, as is evident from the judgment, Ex. W-4 they never claimed any relationship with the property seized by the police. The order passed by the learned magistrate for the return of the gold property to the BGML itself indicates that gold bearing earth was not at all claimed by these three workmen or by any other accused involved in that criminal case.

22. The evidence produced before the Enquiry Officer, oral and documentary was legal evidence and the findings of the Enquiry Officer cannot be set aside on the ground that he has based his findings on any evidence which was not legally admissible.

23. The only question which requires to be dealt with in great detail would therefore be whether on the basis of the evidence produced before the Enquiry Officer, any reasonable person would have arrived at the findings complained of.

24. The evidence of PW-1 Varadappa shows that on 7-7-85 at about 9.15 p.m. himself the other policemen and other police officers along with two panchas went to 'G' block and entered into the premises adjoining the provision shop and in the said premises they found some earthen pots, mercury, kerosene, some cash and two helmets belonging to the mine workers and also some sponge gold. His evidence further discloses that the property was then seized and the accused were taken to the police station. The evidence of PW-2 Venkatappa shows that these persons were found in the said shop and there were six pots with the said material, one forceps, acid and some helmets of the BGML. Only the examination-in-chief of PW-1 Varadappa, PW-2 Venkatappa have been recorded on 17-10-1984. Thereafter the two panchas witnesses PW-3 Jayapal and PW-4 Pitchamuttu have been examined. Their evidence is similar on material points. PW-3 Jayapal States that on 8-7-84 at about 7 a.m. the wife of Doss had approached him in his house with a complaint that on the night of 7-7-85 at about 9 p.m. her husband was talking with the Sub-Inspector of Police of Champion Reef Police station but that he had not turned up till then, and that he should find out his whereabouts. PW-3 Jayapal has then stated that he went to the house of PW-4 Pitchamuttu and explained to him about the matter and then both of them went to the police station of Champion Reef. His evidence further discloses

that when they contacted the incharge of the police station, they were finally told that Doss was inside, in the custody of the police and they should make further enquiry with the Sub-Inspector. It appears in his evidence that after the Sub-Inspector arrived at the police station, they asked him and he told him that he should wait for some time and that himself and Pitchamuttu waited for some time and thereafter his incharge called them and told them that a small case has been registered against Doss and others and that since it was a Sunday they may get him released when he will be produced at the residence of the magistrate. His evidence then discloses that they had taken one advocate by name Shri Anandaramaiah and they got Doss released on bail at the residence of the magistrate. The evidence of PW-4, Pitchamuttu is similar as that of PW-2 Jayapal. The evidence of Pitchamuttu further shows that there were some more persons besides Doss but he did not count them. Both of them however stated that police had taken their signature on certain documents. The three workmen have sought for time to cross-examine these pancha witnesses also. The enquiry held on 16-1-85 has been then adjourned to 4-2-1985. On that day, the Sub-Inspector of Police of Champion Reef Police Station PW-5 Vivekananda has been examined. The evidence of the said witness is to be found on pages 11, 12 and 13 of Ex. M-13. The signatures of the workman are to be found on each page of the said evidence. On that day, all the three workmen sought for time for cross-examination of Sub-Inspector of Police Vivekananda. (The sixth witness M. S. Mahesh PSI of Marikuppam police station has been examined on 20-5-1985. The Deputy Superintendent of Police PW-10 D. Lingamaiah has been examined on 20-11-1985. In the meanwhile, certain other witnesses have been examined, such as PW-7 Dankanachari and PW-8 Muniswamy and PW-9 Dwarakanath. The evidence of PW-5 Venkananda and PW-6 Mahesh is specifically on the point that when they entered into the said shop they found the following six persons viz Mustak Ahmed, Anthony Doss, Mani, Ramachandra, Abu Becker and Raju. They have further described that Mustak Ahmed was sitting in the front side with a scale and that Anthony Doss Mani and Ramachandra were extracting gold in one earthen pot and Abu Becker was helping them. His evidence further discloses that a cash of Rs. 100/- was found in the packet of Anthony Doss and a sum of Rs. 150/- was found in the packet of Mani and that there was a sum of Rs. 900/- in a bournvita tin. The fact that mercury scale, one n.p. six beads, two n.p. coins, kerosene, helmets earthen pots were found along with sponge gold indicate that same dealing in sponge gold was going on. The evidence of these witnesses has not been disputed on the point that the BGBML helmets were found at that place. The irresistible inference would be that since the helmets of the BGBML workman have been found at the pot along with the sponge gold and gold mud the six persons found there were dealing in sponge gold and mixture of gold belonging to the BGBML. The learned counsel for the I party contended that the fact that some cash was found with Doss and Mani has no nexus with the finding of the other articles such as sponge gold, scale mercury, one n.p. coins, two n.p. coins etc. In the context that these three persons were workmen of the BGBML out of the group of six persons found at the spot indicates that the finding of the cash had its own connection with the property found at the place. The fact that helmets were also found leads to further inference that these workmen were participants in the activity going on at the spot. Though it has been stated in the explanations given by them in Exs. M-7 to M-9 that the police have put forth a false case at the instance of their enemies, there is no such suggestion made to either PW-1 Varadappa, PW-2 Venkatappa, PW-5 Vivekananda, PW-6 Mahesh or PW-10 Lingamaiah. There is no case put forth by the workmen either on victimisation for any trade union activity or the workmen incurring any displeasure of the management for any other reason and the management acting in a vindictive manner. The date of the report sent by the said Inspector of Police, Champion Reef police station Ex. M-30 on 8-7-84 itself suggests that even after the said report was sent the management took as many as 10 days to issue the chargesheets to these three workmen on 19-7-84. The evidence of MW-6 Mahesh has corroborated the evidence of PW-5 Vivekananda in all material points. The evidence of PW-10 Lingamaiah has further

fortified the said evidence of PW-5 and PW-6. PW-1 Varadappa has been cross-examined on 5-7-85. PW-2 Venkatappa has been cross-examined on 5-7-85. It was contended that the evidence of PW-1 Varadappa and PW-2 Venkatappa does not show that the workman Doss had anything with him. In my view the appreciation of evidence by the Enquiry Officer especially that of PW-5 Vivekananda PW-6 Mahesh and PW-10 Lingamaiah more convincing and it is difficult to agree that the Enquiry Officer should have preferred the evidence of PW-1 Varadappa and PW-2 Venkatappa to that of PW-5, PW-6 and PW-10. The contents of Ex. M-30 the complaint which was sent on the very next day of the date of incident lends further support to the evidence of PW-5, PW-6 and PW-10. PW-3 Jayapal and PW-4 Pitchamuttu have been cross-examined by these three workmen on 2-8-85. Their cross examination discloses that on 7-7-1984 at about 9.15 p.m. they had not gone to the shop of Mustak Ahmed and did not search any police officer or policemen and did not sign any mahazar. Since the original mahazar had been produced in the criminal court, a copy of the same has been produced before the Enquiry Officer and thereafter the police officers such as PW-5 and PW-6 have been further tendered for cross-examination and they have been cross-examined. The evidence of the police officers shows that soon after the seizure, the property was entered in the property from No. 47/84 and it was produced before the court, after due analysis and examination. PW-6 Mahesh has been cross-examined on 10-8-85. He has been questioned whether any search of their persons had been made before they entered into the said shop. PW-6 has stated that the panchas had searched him. He has further explained that they were PW-4 Jayapal and PW-6 Pitchamuttu. A specific question has been asked to PW-5 as to whether he can say from where the gold had been brought there. The witness has answered that as per the conversation of the accused persons the property was from the old mill of Champion Reef. It has been suggested to PW-6 Mahesh that on 7-7-84 when Doss had gone to purchase cigarettes the police forcibly took him and lodged a false case against him. The witness has categorically refuted the suggestion that the workman Doss was then outside when it was put to him that the various constables had deposed that he was outside. In the cross-examination of Ramachandra Reddy and Mani PW-6 has reiterated that both of them were having earthen pots and that the raid had taken place at about 9.00 p.m.. It has been suggested that he was giving false evidence. The witness has denied the suggestion. It is pertinent to note that no motive has been suggested to him. PW-5 Vivekananda has been cross-examined on 11-8-85. The following questions and answers by the workman Doss in the cross-examinations of PW-5 Vivekananda are recorded—"On the police constables Varadappa and Venkatappa have deposed in their statements that they found me outside the provisions shop, what do you say for this? Ans.—I do not know what statement my P. C. would have given, but I can say that I found you inside the provision shop". Subsequently, the witness has made it very explicit that there were in all six persons in the said shop, Mustak was having a balance in front of him with a beam balance in which Anthony, Mani and Ramachandra, these three workmen were sitting and extracting gold from earthen pots and one Abu Baker was keeping an earthen pot with charcoal and melting small balls and that another Raju was also present. The witness has been further questioned as to how can he give evidence before the civilian. The witness has explained that he can give evidence. The cross-examination of PW-5 Vivekananda for the workmen Ramachandra and Mani discloses that both these workmen were extracting gold from the gold bearing earth. The other suggestions made by the workman have been denied by the witness. On 1-10-85 PW-5 Vivekananda was again tendered and it is recorded that since the property had been produced before the court only the Mahazar had been produced. He has been further cross-examined on that day. He has again refuted the suggestion that Doss was outside and not inside the room. The proceeding dated 20-12-85 discloses that the workman Doss has further cross-examined W-5 Vivekananda. In his evidence dated 25-12-85 PW-5 has stated that on 8-7-84 he had produced the three accused Mani, Doss, Ramachandra Reddy and the properties in P.F. 47/84 before the magistrate. He has made it clear that the properties were recorded in the property



from and produced immediately on 8-7-84 at the residence of the magistrate. The evidence of PW-10 Lingamamah corroborates the evidence of PW-5 and PW-6 on all the material points. The cross-examination of PW-10 Lingamamah is directed whether he had obtained any permission to give evidence before the Enquiry Officer and the witness has stated that he did have permission. PW-10 Lingamamah has stated that the panchas were present at the time and that the suggestion of the workman that the police have conducted a case is not correct. The Deputy Superintendent of Police has further refuted the suggestion that what the police constables have stated is true and not what he has stated. To a specific question as to whether he could say from where the materials had been brought the witness has answered that as per the statements of the accused the gold bearing earth had been brought from old mill area, Champion Reef and accordingly it has been stated in the Mahazar. The witness has further identified the property stating that any body can say that it was gold bearing mud. The witness has pointedly refuted the suggestion that the workman Doss had gone there to purchase cigarettes and the policeman forcibly took him and have foisted a false case against him. Indeed, it is not conceivable as to why the police officers of the rank of Deputy Superintendent and the sub-inspectors of police shall for no reason whatsoever forcibly chose to pick up and drag away the workman Doss or falsely involve Mani and Ramachandra Reddy. In view of the evidence of PW-5 Vivekananda, PW-6 Mahesh and PW-10 Lingamamah leaves nothing to doubt that these three workmen were found at the said place and were engaged in the extraction and purification of gold. The appreciation of the evidence by the Enquiry Officer in that connection is beyond reappraisal.

25. The evidence of PW-7 Dankanachari is on the point that the property seized by the police was gold of about 4 or 5 grams. The point whether he weighed and found it to be gold at the spot or at the police station is not so important, especially so in the face of the evidence of PW-9 Dwarakanath. PW-9 Dwarakanath has sworn that on 13-7-84, the said Inspector of Police of Champion Reef Police Station brought to him four sealed article bearing the seal 'AK' with sample seals and that he examined the contents by taking representative samples and found that Article No. 1 contained gold worth Rs. 174.63 p. He further states that article No. 2 contained a cloth bundle with a polythene packet and that it contained sand with mercury shots weighing 385 grams and the gold content was of 1,206 grams worth Rs. 158.68 p. His evidence further shows that Article No. 3 was a bundle containing sponge gold and he found that it was 6.24 grams worth Rs. 786.87 p. His evidence then discloses that Article No. 4 was a sealed bottle and that it contained mercury of 70 grams. He further stated that on chemical examination the said bottle was found to contain 0.1925 grams of gold worth Rs. 25.31 p. The cross-examination of MW-9 Dwarakanath leaves nothing to doubt that the property produced before him was the same which had been seized by the police on 7-7-84 at the said premises. As has been observed earlier, it is not the case of the workmen that the property belongs to them or that they had any licence to process or deal with the said property under the Karnataka Mines Act.

26. For the defence, the evidence produced is that of Mustak Ahmed, the first accused as shown in Ex. W-4, the judgement. His evidence is that he is not the owner of the provision shop of the 'G' Block and he has no connection with the said shop. He was a co-accused along with these three workmen before the criminal court and secondly the question involved is not about the ownership of the shop. His evidence is of no consequence to help the workman. The other two witnesses examined by the workmen are Jairaj and Sagar (Shekar), their evidence is on the point that on 7-7-84 at about 4.30 p.m. they had left the town returned only at 9.30 p.m. it is further on the point that they left Doss on that day at about 10 p.m. The workman Doss had not pleaded alibi either in his explanation to the chargesheet, or in his explanation to the second show cause notice or in his appeal nor is any suggestion made to any management witness that he was not at all found at the spot. On the contrary, specific suggestions have been made to various management witnesses that when the raid was made he was not in their shop but he was

at some distance from the shop. The management on the part has belied the theory of alibi by examining PW-8 Muniswamy, Clerk of the time office to show that these three workmen had left their respective spots of work by 9 p.m. on 7-7-84. The evidence of Jairaj and Shekar on the point that Doss and both of them had left the town at 4.30 p.m. on that day has been specifically disproved by the management.

26. The evidence of PW-3 Jai Pal and PW-4 Pitchamuttu, the mahazar witnesses cannot be preferred to that of PW-5 Vivekananda PW-6 Mahesh and PW-10 Lingamamah, for the reason that their evidence has been substantiated by the mahazar and the complaint Ex. M-30 which had been prepared at the earliest point of time, whereas the evidence of PW-3 Jai Pal and PW-4 Pitchamuttu runs contrary to the contents of the mahazar. The learned counsel for the 1 party contended that the management has not treated PW-3 Jaipal PW-4 Pitchamuttu hostile and therefore the said evidence ought to have been believed by the Enquiry Officer. The point of law whether a witness should be treated as hostile or not and whether he should have been cross-examined by the management or not are outside the pale of the procedure which is usually adopted by the Enquiry Officer. Strict rules of evidence or the civil procedure code cannot be expected from the Enquiry Officer. I am of the view that merely because the two mahazar witnesses have not been cross-examined for the management by declaring them hostile does not make their evidence preferable to that of the other set of evidence as discussed above.

27. The learned counsel for the 1 party contended that the complaint Ex. M-30 contains corrections without any initials and that it is not a genuine document. On looking at Ex. M-30, it would be evident that the father's name of Doss has been corrected and taking into account the facts and circumstances of the case, it would be obvious that the correction is only of a clerical nature.

28. The learned counsel for the 1 party contended that the management has not proved theft and thus misconduct has not been established. The charges against the workman is that they have committed misconduct as defined in Standing orders 15 (b) (23) 15(b) (28) and 15 (b) (34). Standing order 15 (b) (23) deals with unauthorised possession of use of any property belonging to the company. Standing Order 15 (b) (28) deals with carrying on either alone or with another person on employer's premises any work, or activity not connected with the employer's work without the previous sanction of the employer. There is no dispute on the point that 'G' block is the employer's property. It is not the case of the workman that they had any prior sanction to deal in sponge gold or in any material required for processing gold such as mercury, sponge gold or gold mud etc., Standing Order No 15 (b) (34) deals with theft, fraud or dishonesty in connection with the employer's business or property including any mining material as defined in Mysore Mines Act. The evidence of PW-7 Dankanachari and PW-9 Dwaraka Nath has established that the property seized by the police is a mining material. The fact the first accused had with him the scale and the bournvita tin with Rs. 900 or so, and that the two workmen out of three had a pretty big sum as compared to their then situation, I find that the evidence produced before the Enquiry Officer did establish the misconduct, as defined in the aforesaid provisions.

29. The three workmen have examined themselves as WW-1 WW-2 and WW-3. WW-1 Doss has sworn that the police used to call him as a witness and in one case of Godam he was called as a witness. The evidence is of no consequence. The evidence of WW-2 Mani is that since the date of dismissal he is not gainfully employed. WW-3 Ramachandra Raddy has not been examined after the enquiry has been held to be valid. The evidence of WW-1 and WW-2 is thus of no consequence as to why the findings of the Enquiry Officer should not be accepted.

30. The learned counsel for the 1 party contended that the two Sub-Inspectors of Police PW-5 and PW-6 had not taken permission from their superior officers to give evidence before the Enquiry Officer and that their evidence should not be accepted. No rule or provision of law has been pointed as to why the police Sub-Inspectors should be prevented from giving evidence before the Enquiry Officer in

a domestic enquiry. The contention is not sound. It was argued that the name of police Sub-inspector has not been shown in the complaint Ex. M-30 and that it is a concocted one. Ex. M-30 shows that the Deputy Superintendent of Police, K. G. F. with his staff had gone for the raid. The sub-inspectors of police PW-5 and PW-6 were the members of the staff of the Deputy Superintendent of Police and it cannot be said, for that reason it should be held that Ex. M-30 is a fabricated document.

31. The learned counsel for the I party contended that the material objects were not produced before the Enquiry Officer and therefore his findings are not sustainable. The management was required to prove that mining material including sponge gold or gold bearing mud was seized from the three workmen and to that extent the evidence discussed above has conclusively established its case. The non-production of material objects before the Enquiry Officer has been convincingly explained by submitting that it was produced before the criminal court. The judgment at Ex. W-4 produced by the workman itself substantiates that fact.

32. Exs. W-1 and W-2 have been produced to show that the workman Doss was a trustee of the S.G.M.L. provident fund. Ex. W-3 has been produced to show that the workman Doss has taken part in the proceedings of the meetings of the trustees of the S.G.M.L. provident fund. These three documents at Exs. W-1 to W-3 and the evidence of WW-1 and WW-2 have been pointed out to show that while passing the order of dismissal, the management had not taken into account the previous record of the workmen. The orders of dismissal at Ex. M-21, Ex. M-22 and Ex. M-23 indicate that the management had taken into account the past record and found that there were no mitigating or exonerating circumstances. Looking at the fact that the three workmen have been guilty of the misconduct involving mining material or property of the management and that they have indulged in an activity which is not related with the work of the company without the sanction of the Company, I find that it is not a fit case to invoke the provisions of Section 11-A of the I.D. Act. Even before this Tribunal, no specific plea has been raised and no convincing evidence has been adduced to show that the provisions of Section 11-A should be invoked and in spite of the finding that the findings of the Enquiry Officer are not perverse, the workmen are entitled to any relief.

33. The learned counsel for the I party has placed before me the authority of *Scouter India Ltd. Vs. the Labour Court, Lucknow* (AIR 1989 Supreme Court page 149). The authority is on the point that interference and reinstatement by the labour court even after recording a finding that the enquiry is fair and lawful is not illegal. Para 5 of the authority discloses that the allegations against the workman were that he had indulged in the distribution or exhibition of offensive handbills, pamphlets etc. The authority is with reference to U.P. Industrial Disputes Act, 1947, s6 (2a). There is no such provision in the Industrial Disputes Act 1947. Secondly, the facts of the present case would disclose that it is a case of a serious act of misconduct and not merely a case of distribution of handbills and pamphlets. In my view, the authority has no bearing.

34. Looking from any angle, I am of the view that the findings of the Enquiry Officer cannot be called as perverse and that it is not a case where any reasonable person would not have arrived at the said conclusions. The punishment imposed on them is appropriate and does not call for any inference.

35. In the result, an award is passed to the effect that the management of M/s. Bharat Gold Mines Limited, Oorgaum Post, K.G.F. was justified in dismissing Shri Doss, an Ex-Surface employee of Champion Reef Mine with effect from 17th April 1986, Shri K. Ramachandria Reddy, T. No. 2217, Ex. General Labourer, C. R. Mine from the services with effect from 17-4-1986 and Shri R. Mani T. No. 144109, Ex. General Labourer, C. R. Mines from the services of BGML with effect from 17-4-86 and that they are not entitled to any relief.

(Dictated to the Stenographer, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

[No. L-43012/18/87-D. III(B)]

का.आ. 796—अर्थात्क विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, आ.एन.जी.सी., बड़ोदा और मेहसाना के प्रबंधन से सम्बद्ध नियोजकों और उनके धर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिनियम, अहमदाबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-3-89 का प्राप्ति हुआ था।

S.O. 796.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of O.N.G.C., Baroda and Mehasana and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

BEFORE SHRI C. G. RATHOD, PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL, AHMEDABAD

Reference (ITC) No. 18 of 1987

#### ADJUDICATION

#### BETWEEN

Oil & Natural Gas Commission Baroda &  
Mehsana ..First Party.

#### AND

Their Workmen employed under it. ..Second Party.

In the matter whether the action of the management of ONGC, Mehsana (Gujarat) in terminating the service of Shri Sombabhai Parmar, Vehicle Driver with effect from 11-1-1984 is justified? If not, to what relief the workman is entitled and with what effect.

#### APPEARANCES :

Shri K. V. Gadhia—for the Management.

Shri T. R. Mishra—for the concerned workman.

INDUSTRY : Oil & Gas.

#### AWARD

By an order No. 30012/9/84-D.III(B) dated 12-3-1987, the Under Secretary, Government of India, Ministry of Labour, New Delhi in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section-10 of the I.D. Act, 1947, has referred the dispute between the management of O.N.G.C. Baroda and Mehasana and their workmen to this Tribunal. The dispute referred to is as under :—

“Whether the action of the management of O.N.G.C., Mehasana (Gujarat) in terminating the service of Shri Somabhai Parmar, Vehicle Driver with effect from 11-1-1984 is justified? If not, to what relief the workman is entitled and with what effect?”

2. The second party—Shri Somabhai P. (hereinafter referred to as the Workman) has filed his statement of claim at Ex. 13 and briefly it is as under : that the workman was a permanent employee of the Oil & Natural Gas Commission, Mehasana Project, Mehasana; that the services of the said workman were terminated by the management w.e.f.

11-1-84. The management initially placed the concerned workman under suspension by an order dt. 31-1-83 from that date itself. It is further stated in the statement of claim that while suspending the workman from services, no reason whatsoever was communicated to him. However, on 8-2-83 the memo of charge was issued to him and along with the said memo, statement of charges and statement of allegations were also annexed. Thereafter the management conducted an inquiry into the charges levelled against the concerned workman and issued removal order dated 11-1-84. It is further averred in the statement of claim that the concerned workman has submitted a representation dated 30-12-83, but in spite of the same, the aforesaid removal order was passed. The workman preferred an appeal by letter dated 5-4-84, but so far it has not been replied by the management. It is further averred in the statement of claim that the workman was innocent and has not committed any misconduct which warranted removal from the services. It is further averred in the Statement of claim that the charges levelled against the workman are with regard to the alleged theft of Battery, but the said allegation is far from truth and a deliberate attempt has been made by the management of Oil and Natural Gas Commission and held the workman responsible. In fact, a false and fabricated case has been framed against the workman. It is submitted that the impugned removal order is illegal, invalid and inoperative in law. It is further contended that the workman has never been afforded reasonable opportunity to defend his case; that the workman is an illiterate Driver and is not able to read and write even Gujarati language; that the inquiry is conducted in English language and as such it is vitiated because neither its contents were explained to the workman nor was the workman allowed to be defended by the Defence Assistant. In fact, the workman has been condemned unheard and the whole charge of the theft is concocted and fabricated one. Further it is contended that no police complaint was registered and that the management has not registered a formal complaint of theft, that action of the management is against the principles of natural justice and, in fact, it is a case where no inquiry has been conducted, but the workman has not been afforded any opportunity to defend the case; that in view of the aforesaid facts and circumstances, it is prayed inter alia that the management—Oil and Natural Gas Commission be directed to reinstate the workman on his original pay scale of Driver with full back wages and continuity of service as if his services have never been terminated and further it is prayed that the management be directed to grant all fringe benefits like leave, provident fund, gratuity, bonus etc. as if the workman has continued in the service of the Commission uninterruptedly and such other benefits also as may be deemed fit be granted.

Oil and Natural Gas Commission (hereinafter referred to as 'the ONGC') has filed its written statement to the aforesaid statement of claim at Ex. 15 and is contended as under: that the reference is not maintainable at law and it is liable to be dismissed; that the Hon'ble Tribunal has no jurisdiction to entertain this reference that the reference is incompetent and bad in law; that the ONGC has framed (Conduct, Discipline and Appeal) Regulations, 1976 under Section 32 of the ONGC Act, 1959. It is further contended that the action for major penalty was initiated and taken as per the Regulations; that there is proper compliance and after giving proper opportunity to the delinquent, the punishment was awarded by the disciplinary authority and, therefore, the action is proper, justified and valid in law. It is contended that the workman was suspended as per sub regulation (1) (a) of Regulation 33 of ONGC (CD&A), Regulations, 1976 on 31-1-83. It is further stated that thereafter he was charge-sheeted with all necessary documents, that in the said memorandum of charge-sheet dated 8-2-83, the Commission has specifically stated that the inquiry would be held on the charges set out in the enclosed statement of charges. Further it is denied that the workman was innocent and has not committed any misconduct. In fact, the charges levelled against him have been proved with regard to theft of battery and looking to the gravity of misconduct, his service has been terminated. It is denied that the workman was never afforded reasonable and appropriate opportunity to defend his case. It is further stated that the concerned workman knows Hindi and Gujarati language very well and he was explained the statements recorded during the course of inquiry in Hindi

and Gujarati language and his signatures were obtained. It is denied that the charge of theft is concocted and fabricated one. It is further contended that the Commission knew that the battery in question is stolen by its particular employee only and on primary inquiry, the concerned employee had brought the said battery within short time. It is further contended that the concerned workman was on duty on 3-1-83 that he was asked to pick up the staff at well No. 89 and he was allotted a Jeep No. GRM-5533 at 21:30 Hrs. It was a night time and the concerned workman has given a lift to Mr. B. R. Parmar. It is further stated that during the journey, Mr. Parmar found that one battery of 12 V. was kept in the van and on interrogation the concerned workman has confessed that the battery had been taken from Transport Yard of the ONGC and thereafter they reached the Somabhai's residence and the battery was put inside the house with the help of his son. Mr. Parmar waited for about an hour but Shri Somabhai did not come back and Shri Parmar has brought back the vehicle to the Transport Control room and complained to the Time Keeper that Mr. Somabhai P. has unauthorisedly taken away the battery of ONGC. Thereafter on the next day, early in the morning, Shri Somabhai P. was called in office and confessed his guilt and brought back the stolen battery. Thus the concerned workman had been found guilty of attempting to take away the Commission's property with mala fide intention amounting to attempted theft. For the said offence, he was issued a charge sheet under Regulation No. 36 of ONGC (CD&A) Regulations, 1976 on 8-2-83; that the inquiry was held and the concerned workman was afforded sufficient opportunity to prove his innocence after following the principles of natural justice; that since during the course of inquiry the charges levelled against the concerned workman were proved, the concerned workman was issued a notice dated 29-11-83 as to why he should not be removed from the service. The workman has submitted his representation on 30-12-83, but the reply was not found satisfactory by the disciplinary authority and, therefore they decided to remove him from service and hence his service was terminated on 1-1-84. Having regard to the fact that two other charges were already proved against the concerned workman and on that count the management has imposed the punishment of stoppage of four increments. The Commission also thought it fit to pass an order of termination and as such the order dated 11-1-84 is just, legal and proper and hence it is prayed that the claim made by the Union is illegal, baseless and improper and that it requires to be rejected.

4. At the initial stage of the present proceeding, Mr. A. G. Kapoor, Chairman of the ONGC Employees Union appeared on behalf of the concerned workman. However, as he was promoted as Class-II officer and was transferred from Mehasana to Jammu it was not possible for him to appear and conduct the present proceeding and hence one Mr. S. K. Agarwal appeared on behalf of the Union on 27-7-1988 and thereafter. It appears that thereafter the proceedings were adjourned, from time to time, in view of the request made by the Union and ultimately, Mr. T. R. Mishra appeared for the concerned workman as per the Vakilathama at Ex. 33.

5. Before Mr. Mishra appeared for the concerned workman no one was appearing for the concerned workman or the Union on one or two dates and hence on 13-2-89, the matter was fixed for orders. But thereafter as stated above, Mr. Mishra appeared for the concerned workman on 23-2-89 and submitted an application at Ex. 34 paying inter alia that the matter be taken on the Board. This was not objected to by Mr. K. V. Gadhia for the company and as such the matter was taken on the Board.

6. Thereafter, Mr. T. R. Mishra for the concerned workman filed a Purshis at Ex. 35 stating inter alia that he was not challenging the legality of the inquiry and he does not propose to lead any oral evidence and further prayed that the Court may consider the case of the concerned workman u/s. 11-A of the I. D. Act.

7. In view of the Purshis as above, Mr. K. V. Gadhia for the company also stated that they do not propose to lead any oral evidence.

8. Thereafter, I have heard the arguments of Mr. T. R. Mishra for the concerned workman and Mr. K. V. Gadhia for the Commission.

9. In view of the fact that Mr. T. R. Mishra has stated by giving a Pursus that he was not challenging the legality and validity of the inquiry, it is clear that the inquiry held in the instant case was a legal one. Moreover, on looking to the papers filed at Ex. 17, we find that the concerned workman—the Vehicle Driver was initially placed under suspension on 31-1-83 and thereafter he was issued a memorandum as at Ex. 17/2 dated 8-2-83. Alongwith this memorandum, the statement of allegation against the concerned workman was also sent and thereafter due inquiry was held after the appointment of an Inquiry Officer by office order dated 10-3-83. The Inquiry Officer appears to have recorded the statements of various witnesses. Further, looking into the papers as at Ex. 29/1, it appears that the concerned workman—the Driver was given an opportunity to defend and cross examine the witnesses and in that view of the matter also, it cannot be said that he was not given due opportunity to cross examine the witnesses. The inquiry papers it appears show that the inquiry was held according to the principles of natural justice and in the circumstances and especially in view of the statement made by Mr. T. R. Mishra for the concerned workman, there is no difficulty in holding that the inquiry was legal and valid.

10. The only question that requires to be considered in the present reference is whether I would be justified in interfering with the order of termination passed against the concerned workman—the Driver. Admittedly, his services have been terminated by the Commission as according to the Commission, the charge of attempt to commit the theft of battery has been proved in view of the fact that the services of the said workman were terminated, having regard to the powers conferred u/s. 11-A of the I. D. Act, the Tribunal has all the powers to set aside the order of discharge or dismissal if it is found that in view of the facts and circumstances of the case order of dismissal was not justified. It appears that on reading Section 11-A that if the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. The only condition is that in such a case, the Tribunal has merely to rely on the material on record and has no power to take any fresh evidence in relation to the matter.

11. In the instant case, it appears from the findings given by the Inquiry Officer that the concerned workman had removed the battery in collusion with Shri B. R. Parmar, Jr. Crane Operator. It further appears from the findings given by Mr. S. K. Jain, Inquiry Officer, that they appear to have quarreled among themselves and the Jr. Crane Operator, Mr. B. R. Parmar appears to have reported the matter to Mr. Desai—Time Keeper. The following lines from the findings are important in this connection and they are as under :

"From the statement of above witnesses it is evident that the theft of the battery was made from one of the water tankers parked in Transport section. The battery which was brought back by Sri Somabhai P. and Sri B. R. Parmar in a hired auto rikshaw on 4-1-1983 was of ONG Commission and was fitted in the said water tanker as stated by Sri Tejpal Singh Auto Electrician from the various statement it is transpired that probably Sri Somabhai PMVD has removed this battery in collusion with Sri B. R. Parmar Jr. Crane Operator, but later on it seemed that they had quarreled among themselves . . . . . On the basis of my finding I feel that Sri Somabhai P as well as Sri B. R. Parmar, Jr. Crane Operator both are the culprits in this case."

It is clear from what has been stated as above that the concerned workman, Mr. Somabhai P was not only the culprit in the removal of battery from ONGC, but Mr. B. R. Parmar, Jr. Crane Operator it appears was equally guilty for the said charges. It further appears from Ex. 28, the memorandum

issued on 19-3-86 by the Dy. General Manager, ONGC, Mehsana in connection with Mr. B. R. Parmar for unauthorised removal of battery from a vehicle parked in transport yard of ONGC, Mehsana that he was also found fully guilty of the charges levelled against him in this office memorandum dated 22-12-83. It further appears from the memorandum, looking into the gravity of the offence committed, the Dy. General Manager has ordered that the pay of Shri B. R. Parmar be reduced by two stages i.e. from Rs. 880 to Rs. 825 in the present time scale of pay of Rs. 550 for a period of two years w.e.f. 18-3-86. It, therefore, appears to me that in the instant case having regard to the circumstances of the case, the Commission appears to have acted harshly in passing dismissal order in the case of Mr. Somabhai P., the Driver. It has to be noted that Mr. Somabhai—the Driver and Mr. B. R. Parmar appear to have removed the battery in question and then the said battery was taken by Mr. Somabhai to his house and was kept at his house at night. It is clear that on the next day when both Mr. Somabhai P. and Mr. B. R. Parmar on being questioned by the ONGC officers, appear to have confessed their guilt and brought back the said battery in a Rickshaw. In the circumstances, even assuming for the sake of argument that the concerned workman, Mr. Somabhai P. was guilty, the sentence awarded to him in the instant case appear to be too harsh. The concerned workman is without any job from 11-1-84. Further the contention of the Commission is that the concerned workman was also held guilty for two charges earlier. The said charges are (a) Unauthorisedly lifting Commission's vehicle GJC 5302 from the Project premises and (b) Causing avoidable loss to the Commission to the tune of Rs. 18,000 by causing accident to the said vehicle while being used unauthorisedly. So far as the first offence is concerned, though there are two separate charges as above, it appears that the said offence occurred during one and the same transaction and the management had imposed the punishment by stopping his four increments. In the circumstances of the case, it would be just and proper that the concerned workman be reinstated without any back wages. It appears that the order of termination dated 11-1-84 is passed more than five years ago and since then he is without any job. The reference was also filed in this Tribunal in March, 1987 and initially the concerned workman could not be served and in view of the time taken by the parties as stated in the Rojnamme there has been a delay in the disposal of this reference. It may be stated that the concerned workman was without any job during this period and it appears that he is sufficiently punished for the offences as above and in my opinion, the end of justice will meet if he is reinstated with continuity of service without any back wages and hence the order :

#### ORDER

Shri Somabhai Parmar, Vehicle Drive is hereby ordered to be reinstated within two months of the publication of this award.

The concerned workman will not be entitled to any back wages from the date of termination till the date of his reinstatement as ordered above. No order as to costs.

Sd/-

G. J. DAVE, Secy.

Ahmedabad,

Dated : 18th March, 1989.

G. G. RATHOD, Presiding Officer

[N. I-30011/9/84-D.III (B)]

का० प्रा० ७०७.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसूची में, केन्द्रीय सरकार राजकोला स्टील प्लांट सेल को इमान्दाहमन्तेन अथारिज, सतना के प्रबन्ध-मंत्र में सम्बद्ध नियॉ-जकों और उनके कामकारों के बीच, अनुसूची में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 2०-३-८९ को प्राप्त हुआ था ।

S.O. 797.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Isnat Limestone Quarries, Satna of Rourkela Steel Plant, SAIL and their workmen, which was received by the Central Government on the 27-3-89.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(48)/1984

#### PARTIES :

Employers in relation to the management of Isnat Limestone Quarries, Satna of Rourkela Steel Plant, SAIL, Babupur, Satna (M.P.)

#### AND

Their workman, Shri Sital Prasad, Mining Mate, represented through the Hindustan Steel Limestone Mazdoor Union, 79/10, Krishna Nagar, Satna (M.P.)

#### APPEARANCES :

For Workman—Shri C. S. Tiwari.

For Management—Shri R. C. Srivastava, Advocate.

INDUSTRY : Limestone Mining DISTRICT : Satna (M.P.)

#### AWARD

Dated, January, 17, 1989

The Central Government in the Ministry of Labour vide Notification No. L-29012/63/83-D III(R) dated 20th June, 1984 referred the following dispute to this Tribunal, for adjudication :—

“Whether the action of the management of Isnat Limestone Quarries, Satna of Rourkela Steel Plant SAIL, in removing from service Shri Sital Prasad Mining Mate, with effect from 16th March, 1983 is justified? If not to what relief is the workman concerned entitled?”

2. It is common ground that Shri Sital Prasad Pande was employed in Hindustan Steel Limestone Quarry of Rourkela Steel Plant as Mining Mate and was working at Babupur Headquarter, Rourkela Steel Plant. His services were terminated vide order dated 30th May, 1983 by the order of Chief Superintendent (OMO) for continuous unauthorised absence without intimation with effect from 16th March, 1983.

3. The case of the workman is that from 16th March, 1983 he had to go for marriage and was on medical leave. His sickness continued, therefore he applied for leave on 19th March, 1983 on plain paper stating that unless he is well he be allowed leave. He was treated in the dispensary of the management but he did not get well. Therefore he took treatment from Dr. Hemant at Satna and from time to time informed the management. On getting well he went to resume his duty on 13th June, 1984 and presented his joining report. But he was not taken on duty instead Shri Jha who was Incharge told him that he must collect his arrears and bonus etc. and submit his resignation. He refused but he learnt that his services were already terminated with effect from 16th March, 1983. Management gave no reply to his appeal against this order.

4. The workman was on authorised leave but his services were terminated without any charge-sheet or enquiry or without giving him any opportunity to justify his absence. His services were terminated by the Chief Superintendent without any authority. It is the manager who could only do so.

5. The case of the management is that the reference is wrong, misconceived, illegal, without application of mind

and without jurisdiction and therefore it is not maintainable.

6. The case of the management further is that Shri Sital Prasad at the relevant time was working in supervisory capacity and drawing wages more than Rs. 1000 per month, as such he is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

7. Case of the management further is that Shri Sital Prasad joined the services on 1st of July, 1976 in the regular establishment declaring that he was married. Therefore his going on leave for marriage is false and if he conducted second marriage it is illegal.

8. The Certified Standing Orders provide the procedure for proceeding on leave, medical or otherwise. Shri Sital Prasad was wilfully absent without prior proper sanction of leave. On 19th March, 1983 he only sent an application requesting for extension of leave on medical ground for indefinite period. Neither earlier leave was applied nor any medical certificate attached with the leave application. On 5th April, 1983 management telegraphically intimated Shri Sital Prasad to join his duties and simultaneously sent letter dated 6th April, 1983 at his permanent and local address vide registered letters which came back undelivered. A notice was also affixed on the Notice Board, but Shri Sital Prasad remained wilfully absent and did not inform his whereabouts. Therefore removal order was sent by registered post A.D. at his home address as well as local address which duly received by him. This notice was also displayed on the Notice Board. The show cause notice dated 6th April, 1983 itself contains the charge of wilful unauthorised absence and as such no separate letter containing the charge was required to be sent. The rest of the averments were generally denied.

9. Before I take up the main question I will dispose of the preliminary objection. Except for the bald assertion that reference is wrong, illegal, without jurisdiction, without application of mind and is not maintainable, management did not state any ground for the same. Mere bald statement without anything in support either by way of evidence or arguments such an objection is without any basis. It is, therefore, overruled.

10. Next objection is that the workman being the Mining Mate is not a workman within the meaning of S. 2(s) of the I.D. Act. The plea is based on an erroneous interpretation of Sec. 2(s) of the I.D. Act. The unity between the opening part of the definition and Cl. (4) is expressly preserved by using the word “such” twice in opening parts. The words which combines the two parts are not “but does not include any person”. They are “but does not include any such person” showing clearly that the words being excluded is the person who is “employed to do the supervisory work” and he is not to be excluded because being employed in supervisory capacity, he draws wages exceeding Rs. 500 p.m. or exercise function of a particular character. In the present definition in order that a person employed in a capacity is pushed out of the orbit of workman he must be drawing wages exceeding Rs. 1600 p.m. In the instant case, even the case of the management is that he is drawing wages of about Rs. 1000 p.m. Therefore it is proved beyond doubt that the workman though working in supervisory capacity is a workman within the meaning of Sec. 2(s) of the I.D. Act.

11. It is the case of the workman that Manager of the Quarry was his appointing authority and he could alone terminate his services. While in the instant case, his services have been terminated by removal order dated 1st June, 1983 of the Chief Superintendent. Therefore his termination order is void ab initio. On the other hand, plea of the management is that the removal order was passed by the Chief Superintendent but it was confirmed by the Manager vide his order dated 11th August, 1983.

12. I have gone through the pleadings of the parties. The workman had submitted his written statement of claim on 22nd December, 1984 and the management had filed its written statement on 5th February, 1985 but the management did not take up these plea in his written statement which was subsequently filed. Therefore the assertion made during arguments are without any pleading in that behalf. In any case, the order dated 11th August, 1983 of the Management is not removal order. It is only an order finalising the account of

the workman. This is apparent from the opening words of letter dated 11th August, 1983 which are to the following effect :—

"In accordance with the Removal Order No. MS/83010 dated 1st June, 1983 of Chief Superintendent (B) OMQ, Rourkela the name of Shri Sital Prasad Mining Mate, P. No. 38081 of Ispal Limestone Quarries, Satna has been removed from the roll of the Company w.e.f. 16th March, 1983."

From the above it is crystal clear that the removal order dated 1st June, 1983 was passed by the Chief Superintendent and his services were already terminated with effect from 16th March, 1983. Therefore any order passed on 11th August, 1983 finalising his account by the Manager will not make it a termination order passed by the Manager. It is perhaps for this lacuna that the management thought it fit not to specifically deny in its pleading dated 2nd February, 1985 that the removal order was passed by the Chief Superintendent. The order of removal passed by the Chief Superintendent was without jurisdiction. Therefore the removal of the workman is ab-initio void. I hold accordingly.

13. In view of any above findings I need not go through the merits of the case in detail. It will suffice if I briefly discuss the facts.

14. In support of his case Sital Prasad examined himself and proved his leave application Ex. W/1, his representation against termination order Ex. W/2 and two postal receipts. In his cross-examination he admitted that he was prosecuted for a case under S. 363 I.P.C. and he was arrested by police on 14th April, 1983. He was on police remand till 11th May, 1983. He was further unable to show or prove any medical certificate and he admitted that he had not submitted any medical certificate in support of his leave application. On the other hand, management has examined Asstt. Manager Shri R. K. Jha and one Shambhu Singh. Statement of Shri R. K. Jha is to the effect that before proceeding on leave he has not got his leave sanctioned and the applications filed by him for leave were not in accordance with the Cl. 16 of the Standing Orders for the Ispat Limestone Quarry, Satna. I have gone through the said rule and I find that the applications for leave of the workman were not in accordance with the said Cl. 16. Therefore the same are worthless.

15. The other witness examined is Shambhu Singh is the father of the girl Manoj Kumari a student of X Class who is alleged to have been kidnapped by the workman for which he was arrested and detained in jail. This fact is not denied by the workman. His plea is only that he was falsely implicated. This question is sub-judice therefore I need not make any comment on this. The sum and substance of the evidence of the parties is that the plea of the workman that he was on authorised leave on account of illness is false. He was in fact absconding in the beginning and was arrested later on. He remained absent for this reason and sent application for leave in violation of the Standing Orders of the Company. Therefore his absence cannot said to be authorised or justified.

16. Admittedly the workman was not given any charge-sheet or notice or retrenchment compensation though he was a regular employee. Clause 32 of the Standing Orders lays down :—

"Where a workman has been convicted of a criminal offence in a court of law or where the General Manager is satisfied, for reasons to be recorded in writing, that it is inexpedient or against the interest of security to continue to employ the workman, the workman may be removed or dismissed from service without following the procedure laid down in Standing Order No. 31."

From this it is apparent that it was not a case falling under Cl. 32. It was a case falling in Cl. 31 which lays down a procedure for imposition of minor and major penalties. This procedure of Cl. 31 has not been admittedly complied with. Therefore also the termination of the workman is illegal, improper and unjustified. The order of removal is therefore liable to be set aside for the reasons that firstly it was passed by a person not authorised to do so and secondly it was contrary to the procedure laid down under Cl. 31 and 32. It is,

therefore, ordered that the workman is entitled to be re-instated.

17. Question arises whether he is entitled to the relief of back wages or not. On consideration of the evidence above I have already found that the absence of workman was not justified and the reasons assigned by him for his absence is not proved as justified. Therefore the workman to my mind is not entitled to any back wages. In view of my finding I need not consider the authorities relied on by both the parties. Accordingly I answer the reference as under :—

That the action of the management of Ispat Limestone Quarries, Satna of Rourkela Steel Plant, SAIL, in removing from service Shri Sital Prasad, Mining Mate with effect from 16th March, 1983 is not justified. He is to be reinstated but without any back wages. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-29012/63/83-D.III(B)]

नई दिल्ली, 3 अप्रैल, 1989

का० आ० 798.—औद्योगिक विवाद अधिनियम, 1947 (1917 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ने जी० एस० मिश्रा एण्ड पार्टनर्स, ठेकेदार, मै० उड़ीसा मिनरल्स डेवलपमेंट कॉर्पोरेशन लि०, मुकाम प्रा० बारबिल जिला के०नार, उड़ीसा के प्रबन्धन से सम्बद्ध निधियों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के तत्पक्ष में प्रस्तुति करी है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

New Delhi, the 3rd April, 1989

S.O. 798.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. G. S. Mishra and Partners, Contractors. M/s. Orissa Minerals Development Corporation Ltd., At/P.O. Barbil, Distt. Keonjhar, Orissa and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

#### INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

Industrial Dispute Case No. 45 of 1987 (Central)

Dated, Bhubaneswar, the 16th March, 1989

#### BETWEEN

The Management of M/s. G. S. Mishra and Partners, Contractors, M/s. Minerals Development Corporation Ltd., At/P.O. Barbil, Distt. Keonjhar, Orissa.

..... First Party—Management.

#### AND

Their workman Sri Pitambar Behra represented by Barbil Workers Union.

..... Second Party—Workman.

#### APPEARANCE :

Sri G. S. Mishra, Partner of M/s. G. S. Mishra and Partners..... For the First Party—Management

Sri R. M. Latif, Secretary of Barbil Workers Union. .... For the Second Party—Workman.

#### AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by

order dated 27th May, 1987 have referred for adjudication the following dispute :—

“Whether the action of M/s. G. S. Misra and Partners, Contractors of M/s. OMDC Ltd., At/P.O. Barbil, Dist. Keonjhar, Orissa in refusing employment to Sri Pitambar Behera, Miner with effect from 10-12-86 is justified? If not, to what relief is the workman entitled?”

2. The case of the second party-workman advanced in the statement of claim filed on his behalf by the Secretary, Barbil Workers Union is that Sri Behera had been continuously working in the Manganese Mines of the Orissa Minerals Development Corporation Ltd. since 1983 under the Contractors. While working under the Contractors M/s. G. S. Misra and Partner, he met with an accident in the Mines on 17-9-86 and sustained an injury in his left eye. He got treatment initially at the Hospital at Thakurani of the O.M.D. Company Ltd. and thereafter at the Government Hospital at Keonjhar and also at the TISCO Hospital, Jamshedpur. During the period of illness, he demanded injury compensation from the Contractor, but was threatened with refusal from employment. On 10-12-86, he was declared fit to resume his normal duties by the Medical Officer and he reported to duty but he was refused employment by the Contractor. The plea on behalf of the workman is that such refusal of employment amounted to retrenchment. In the circumstance, he claimed reinstatement with back wages from 10-12-86. The first-party in its written statement filed through its partner contended that the reference is not maintainable and is bad in law in as much as no dispute had been raised on behalf of the workman regarding alleged refusal of employment. The first party took the further plea that the second party workman, who had been working in the Mines under different Contractors was employed by it on 2-7-86 purely on temporary basis and he absented himself from duty from 18-9-86 without taking leave or permission from the first party. On 15-10-86, the first party sent a letter to the second party-workman in his home address asking him to report to duty within fifteen days from the date of issue of the letter but it was returned back with postal remark that the addressee was not available. On 15-11-86 the first party sent another letter by Post to the second party-workman in his home address informing that his employment has been terminated and the said letter was also received back without delivery with the Postal endorsement that the addressee was absent since long. The first party denied the plea advance on behalf of the second party that he suffered an injury in his left eye in course of his employment.

3. On this pleadings of the parties the following issues are framed :—

#### ISSUES

- (1) If the reference is maintainable?
- (2) Whether there was refusal of employment to Sri Pitambar Behera, Miner, with effect from 10-12-86 as alleged?
- (3) Whether there is voluntary abandonment of employment by the above named workman with effect from 18-9-86 as alleged by the Management?
- (4) Whether the alleged refusal of employment to the above named workman is justified?
- (5) To what relief, if any, the workman is entitled?

#### FINDINGS

##### ISSUE NO. 1 :

4. So far as the question of maintainability of the reference is concerned, it was argued on behalf of the first-party that there is no proof that prior to conciliation the workman did raise any demand seeking employment and therefore, there existed no industrial dispute to be referred to this Tribunal by the Central Government. In this connection, it may be stated that the Government were well within their rights to refer an existing, as also, an apprehended

dispute for adjudication. In this particular case the order of reference reveals that there existed a dispute between the employer in relation to the Management of M/s. G. S. Misra and Partner, Contractor, M/s. Orissa Minerals Development Corporation Ltd., Barbil, Keonjhar, Orissa and their workman.

5. In the statement of claim in paragraph 5, it was stated that on 10-12-86 after being declared medically fit when the second party-workman reported to duty he was refused employment by the first party without assigning any reason. It appears that thereafter the dispute was admitted to conciliation and the conciliation having failed the present reference was made by the Central Government. Neither the partners of the Contractor firm M/s. G. S. Misra and partner nor any employee of the said firm was examined in this proceeding to state that no demand was made by the workman to be allowed to join on 10-12-86. In the circumstance, I would hold that there existed a dispute between the parties, when the present reference was made by the Central Government and as such, the reference is maintainable and competent.

##### ISSUE NOS. 2 & 3 :

6. So far as these issues are concerned it is the case of the second party-workman that on 10-12-86 after being declared medically fit when he went to join his duties, the first party did not permit him to join. It is however, the case of the first party that the second party absented himself from duty from 18-9-86 without giving any intimation to the first party and as such, it amounted to voluntary abandonment of employment by him.

In this connection, I may state that none from the firm of M/s. G. S. Misra and Partners was examined to state on oath that on 10-12-86 the second party did not report to duty and therefore, there was no question of refusal of employment to him. On behalf of the first party two witnesses were examined. They are the Senior Management Personnel and Industrial Relationship of the Orissa Minerals Development Co. (M.W. 1) and the Manager (second class) of the said Company (M.W. 2). M.W. 1, who gave evidence in this proceeding in April, 1988 stated that the second party workman Pitambar Behera has been working with the Contractor Hardeo Singh and Co. in Roida Mines. He proved Ext. G, the entries in the form 'B' register maintained by the O.M.D. Company as principal employer relating to the second party-workman in respect of Bhadrasahi Iron Ore Mines and also the entry Ext. H in the Register of Wages showing payment of wages to the second party by the said contractor. He did not give any evidence with regard to the alleged refusal of employment or alleged abandonment of employment which is the subject matter of the dispute in the present proceeding. M.W. 2 produced and proved the form 'I' Register (Register of Minors Accidents) maintained by the O.M.D. Company and stated that it does not show any accident having taken place in the Manganese Ore Mines on 17-9-86. To questions put by me, he however, admitted that Ext. J shows that on 17-9-86 an accident took place in the Mines but it related to a workman named Bindheswar Harijan, who sustained an injury in his right eye. He stated that the Mining Mate of the concerned Mines sends the injured workman to the Hospital of the Mines with a slip. He also stated on 17-9-86 Mr. S. K. Dutta was the Mining Mate in the Manganese Ore Mines at Thakurani and he is still in the employment of the O.M.D. Company Ltd. In this proceeding the workman examined himself on 4th April, 1988 and stated on oath that on 17-9-86 while working in the Mines he suffered an eye injury and went to the Contractor's Office. He approached the Clerk of the Contractor named Naresh Patra, who gave him a slip. With the slip he went to the Hospital of the O.M.D. Company Ltd. He also stated that when he sustained injury on account of the accident, the Mining Supervisor and others were present. The Contractor firm, namely, M/s. G. S. Mishra and Partner, which examined witnesses subsequently, did not choose to examine the Mining Supervisor, the Mining Mate or Naresh Patra or anybody who were working in the Mines on 17-9-86 to state that the second party did not sustain any injury in his eye in any such accident. The workman produced the xerox copy of a medical certificate issued by the Medical Officer on 21-11-86



(Ext. 5), which shows that the second party-workman was under his treatment and was unfit to attend duties on account of an injury in his left eye. He recorded the duration of absence of the second party to be forty eight days from 27-9-86 to 21-11-86. He also proved a slip issued by Jamsnedpur Eye Hospital (Ext. 6) and said that it was the admission coupon. He stated that he was cured and got the fitness certificate from Jamshedpur Eye Hospital on 9-12-86, which he gave to the Contractor on 10-12-86. This certificate, however, appears to bear the date 21st April, 1987 which does not have any bearing so far as the present proceeding is concerned. The genuineness of Ext. 5, however, has not been questioned by the first party and as such, on the basis of Ext. 5 and the evidence of the workman himself, it is to be held that the workman remained under the treatment of the Medical Officer of the O.M.D. Company Ltd. from 27-9-86 to 21-11-86. Non-examination of any employee of the Mines, who was present in the mines on 17-9-86 by the first party as a significant circumstance and the fact lends support to the workman's plea that on 17-9-86 in course of his employment in the Mines he met with an accident and sustained an injury in his left eye.

7. Voluntary abandonment of employment by a workman is a question of fact. In this proceeding the employer M/s. G. S. Misra and Partner alleged in his written statement that after the second party-workman absented himself from duty from 18-9-86 without taking leave or permission, he Management sent a letter by Post to him on 15-10-1986 asking him to report to duty with fifteen days from the date of issue of the letter which was received back without delivery to the second party-workman with Postal remark that he was absent. It was further alleged that on 15-11-86 the employer again sent a letter by Post to the second party-workman intimating him that his services have been terminated and the said letter was also received back without delivery with the Postal remark that the second party was absent since long. These assertions in the written statement have not been proved by any evidence whatsoever, by the employer.

8. In the circumstances appearing in this case, I have no hesitation to hold that voluntary abandonment of employment by the second party-workman with effect from 18-9-86 as alleged by the employer has not been substantiated.

The workman in his evidence on oath categorically stated that he after obtaining the medical fitness certificate went to the employer on 10-12-86 to join his duties but employer did not permit him to join. This statement has not been contradicted by any evidence adduced on behalf of the employer. In the circumstance, I would hold that there was refusal of employment to the second party-workman by the first party-employer on 10-12-86 as alleged by the second party workman.

Issue No. 4:

9. In the facts and circumstances of the case particularly in view of the plea of the first party that the second party-workman did not sustain any employment injury while working in the Mines on 17-9-86 though the same is evidenced by the Medical Certificate issued by the Medical Officer of the Principal Employer Ext. 5, I would hold that such refusal of employment by the employer was unjustified.

10. Some argument was advanced on behalf of the Management that the workman had been temporarily employed by the employer, M/s. G. S. Misra and Partner with effect from 2-7-86 and he absented himself from duty with effect from 18-9-86. Since he did not complete the period of 240 days before he was terminated, the termination of his employment can not be challenged on the ground of violation of Section 25F of the Industrial Disputes Act. The answer to this contention is that the reference made by the Central Government does not require an answer with regard to the legality of the action of the Management in refusing employment to the workman with effect from 10-12-86. It merely requires an answer as to whether the first party-

employer was justified in refusing employment to the workman with effect from 10-12-1986. In the circumstance, the question as to whether the refusal of employment amounted to retrenchment or not, need not be gone into in this proceeding.

11. Issue No. 5:—Some evidence has been adduced on behalf of the First Party-Management that from 1-5-1987 the second party got employment in the Bhadra Sahi Iron Mines and also in Roida mines. The statement made in this respect by M.W. 1 and the facts revealed by Exts. G and H have not been disputed on behalf of the workman. In this circumstance, I would hold that the workman is entitled to reinstatement with back wages from the period from 10-12-1986 till 30-4-1987. He is not entitled to back wages after 1-5-1987.

12. In the circumstances of this case, keeping in view the scope of the reference, I would answer the reference in the following manner:—

“The action of M/s. G. S. Misra and Partner, Contractor of M/s. Orissa Minerals Development Company Ltd. At/ P.O. Barbil, Dist. Keonjhar, Orissa in refusing employment to Sri Pitambar Behera, Miner with effect from 10-12-1986 is unjustified. He is entitled to be reinstated with back wages from 10-12-1986 till 30-4-1987 and not thereafter.”

Dictated and corrected by me.

S. K. MISRA, Presiding Officer

[No. L-27012/3/87-D.III(B)]

नई दिल्ली, 4 अप्रैल, 1989

कां० प्रा० 799.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार में उड़ीसा माइनिंग कॉर्पोरेशन लिमिटेड की एग० जी० बी० के० मैंगनीज माइन्स के प्रबन्धन से सम्बद्ध विवादों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्त हुआ था।

New Delhi, the 4th April, 1989

S.O. 799.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SGBK Manganese Mines of M/s. Orissa Mining Corporation Limited, and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESHWAR  
PRESENT :

INDUSTRIAL DISPUTE CASE NO. 29 OF 1987

(CENTRAL)

Dated, Bhubaneswar, the 10th March, 1989.

BETWEEN :

The Management of SGEK Manganese Mines of M/s. Orissa Mining Corporation Limited,

.....First Party—Management.

AND

Their workman Smt. Ekadosia Barik, Mazdoor, At : Ganua, P.O. Ganua : Via : Joda, Dist : Keonjhar.  
...Second Party—workman.



## APPEARANCES :

Sri D. Pradhan, Manager (P & A), Orissa Mining Corporation Ltd., : For the First Party—Management.

Sri B. Khillar, General Secretary of the Union. : For the Second Party—Workman.

## AWARD

The Government of India in the Ministry of Labour, New Delhi in exercise of the powers conferred upon them by clause (d) of Sub-Section (1) and Sub-Section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), and by their order dated 12th March, 1987 have referred for adjudication the following dispute :—

"Whether the action of the management of SGEK Manganese Mines of M/s. Orissa Mining Corporation Ltd., At/P.O. Guruda, Via : Joda, District Keonjhar in terminating the services of Shri Ekadosia Barik, Mazdoor with effect from 27-9-84 is justified? If not, to what relief is the worker entitled?"

2. The case of the second party—workman as it appears from the statement of claims filed by him in this proceeding is that he was a permanent employee working in the Mines under M/s. Serajuddin & Co. and after the mining lease of M/s. Serajuddin & Co. expired and the Mines was taken over by the Orissa Mining Corporation Ltd., he was appointed by the Corporation on 18-6-1982 to work in the said Mines. The Management, however, apparently for no reasons, terminated his employment with effect from 27-9-1984 without any notice to him and without paying him any compensation. The workman challenged the action of the Management as illegal and unjustified and claimed to be re-instated in service with full back wages.

3. The first party, namely, the Management of M/s. Orissa Mining Corporation Ltd., filed written statement in which it contended that the services of the second party—workman was not terminated by them. On the other hand, the second party himself remained absent from duty without leave or without giving any intimation from 1-8-1984, which fact was reported to the Mines Manager on 24-8-1984 and as per the said report he directed removal of his name from the Rolls in accordance with the provisions of the model standing order under the Industrial Employment (Standing Orders) Act, 1946.

4. In view of such pleadings, the only question which arises for consideration is as to whether removal of the second party from the Rolls of the Mines by an order passed by the Mines Manager on the ground that he abandoned his employment on 1-8-1984 amounts to termination of employment and if such removal offended any of the provisions of the Industrial Disputes Act and rendered the action of the Management illegal and unjustified.

5. Before entering into the evidence adduced by both parties in support of their respective contentions, I may refer to a decision reported in A.I.R. 1982 Supreme Court 854 (L. Robert D'Souza V. Executive Engineer, Southern Railway and another) in which the effect of striking off the name of a workman from the Roll was considered. In the said case the meaning of the expression 'retrenchment' as used in the Industrial Disputes Act, 1947 was also considered and it was held that —

"The definition of expression 'retrenchment' in Section 2(00) is so clear and unambiguous that no external aids are necessary for its proper construction. Therefore, we adopt as binding the well settled position in law that if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer

and the workman concerned contains a stipulation in that behalf; (iv) or termination of service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(00). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment, as held by this Court in Delhi Cloth & General Mills Ltd. case (AIR 1973 SC 85)".

In the very same decision it was held that striking off the name of an employee from the Rolls on the ground of continued absence without leave which amounts to retrenchment must be held to be invalid if the pre-conditions for bringing about a retrenchment are not complied.

6. Keeping in view the aforesaid position we may examine the admitted facts of this case. In the present case the second party—workman alleged termination of employment while the first party—Management advanced the plea that it was a case of striking off the name of the second party—workman from the Rolls on account of his continued absence from duty without leave or permission with effect from 1-8-1984. In terms of the decisions referred to above, it is a clear case of retrenchment and on account of non-compliance of the pre-conditions it must be held to be invalid.

7. It is admitted by the witness examined on behalf of the first party—Management, who at the relevant time was the Mines Manager of the concerned Mines that as per the provisions in the Industrial Employment (Standing Orders) Central Rules, 1946, absence by an employee without leave for more than ten days in a misconduct and there is provision in the said Rules as to how such employees can be punished for misconduct. He also admitted that as per the said rules the second party—workman committed misconduct by remaining absent from duty without leave for more than ten days but he did not take any action against the second party—workman for such misconduct because he was covered by another clause of the Standing Orders, according to which he lost his lien of services by his own action. The Management's witness also stated that initiation of action against the workman for such misconduct besides striking off his name from the Rolls, would have been superfluous. I do not think I can agree with the plea of the Mines Manager as aforesaid. In the decision I have cited above reported in A.I.R. 1982 Supreme Court, 854, it has been clearly held in paragraph 21 that—"Absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and inquiry or at any rate without complying with the minimum principle of natural justice."

8. The workman in this proceeding has denied the allegation that he unauthorisedly remained absent without giving any application for leave. The Management through the Mines Manager sought to prove that the workman did remain absent without submitting any application for leave with effect from 1-8-1984. The matter could have been cleared had the Management initiated a proceeding against the workman for such alleged unauthorised absence. This course was not adopted. As admitted by the Mines Manager—M.W. 1, even no notice was sent to the said workman calling upon him to join his duties. The Register Keeper of the Mines, who reported the fact of unauthorised absence of the second party—workman, through the Mines Foreman, was not examined in this proceeding. The Mines Foreman was also not examined. The reason for delay in submission of such a report (Ext. A) after such long lapse of time though the workman allegedly remained absent from duty with effect from 24-8-1984 has not been explained. All these circumstances clearly establish that the action of the Mines Manager in striking off the name of the second party—workman from the Rolls, which—amounts to retrenchment or termination of his employment without any enquiry and without following the principle of natural justice was thoroughly bad in law and was also invalid because of non-compliance of pre-conditions for a valid retrenchment.

9. In the circumstance, I would hold that the action of the Management of AGBK Manganese Mines of M/s. Orissa Mining Corporation Ltd., At P.O. Guruda, Dist. Keonjhar amounted to termination of service of the second party-workman and that such termination is illegal and unjustified.

10. Now coming to the question of relief to which the workman is entitled in the facts and circumstances of the case, I would direct that the second party-workman is entitled to re-instatement with 50 % back wages from the date of termination of his employment till he is re-in-state.

The reference is answered accordingly.

Sd./-

S. K. MISRA, Presiding Officer.

[No. L-27012/41/85-D. III (B)]

का० प्रा० ८०० — औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा १७ के अनुसूच में, केन्द्रीय सरकार भारत गोल्ड माईन्स लि., कोलार गोल्ड फ़िल्ड्स के प्रवर्धक से सम्बद्ध निष्पक्ष और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पक्षों को प्रशिक्षित करती है, जो केन्द्रीय सरकार को २८-३-८९ को प्राप्त हुआ था।

S.O. 800.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore, as shown in the Annexure, in the industrial dispute between the employers in relations to the management of Bharat Gold Mines Limited, Kolar Gold Fields and their workmen, which was received by the Central Government on the 28-3-1989.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated 20th day of March, 1989

Central Reference No. 78/87

#### I PARTY :

Shri C. Mohanraj, Door No. 6 Oriental Police Line, Coromandel P.O. Kolar Gold Fields 563118 Karnataka.

Vs.

#### II PARTY :

The Chairman-cum-Managing Director Bharat Gold Mines Ltd., 'Suvarna Bhawan' Oorgaum, Kolar Gold Fields Karnataka.

#### APPEARANCES :

For the I Party Shri K. J. Shetty, Advocate.

For the II Party Shri V. Gopala Gowda Advocate.

#### AWARD

The Government of India, Ministry of Labour by exercising its powers under Section 10(1)(d) of the I. D. Act has made the present reference by its Order No. L-43012/2/85-D.III (B) dated 31st March/2nd April 1987 on the following point of dispute.

#### Point of Reference

"Whether the termination of C. Mohanraj T. No. 155888 General Labour, Champion Reef Mine, Bharat Gold Mine Limited, Kolar Gold Fields is proper and justified? If not so, to what relief is he entitled?"

2. The I party workman has filed his claim statement and his contentions, in brief, are as follows :

He was appointed by the II party as a casual labour with effect from 18-8-1980. He was sent for medical fitness on 4-10-80. He underwent training from 6-10-80 to 25-10-80. He was discharging his duties to the best satisfaction of his superiors. He was stopped from work with effect from 31-8-81 and he was referred to the B.G.M.L. hospital for mental derailment. The II party sent him to Nimhans on 5-9-1981 for medical check-up along with one Mr. Veeraswamy. Ward boy of the BGML hospital. On 5-2-83, Dr. Gowda of Nimhans gave a letter to the Mines Manager N. Palani to provide surface job to him, but he was not given that job. In the meanwhile, the I party again became sick and was undergoing treatment in Nimhans. One Mr. Natarajan, APM, Nundydroog Mines got him admitted to the Nimhans on 27-7-1983. On 5-8-83 and 13-9-83 he was given a certificate to continue his treatment by attending to the hospital once in a month on a Tuesday and he was advised to do his work on the surface. In spite of the said certificates, the II party refused to employ him. The II party has passed an order dated 21-10-81 behind his back. It is illegal. The II party has taken a contention that his work was not satisfactory. It is untenable. He had completed continuous service as defined in Section 25-B of the I. D. Act. No show cause notice or chargesheet was issued to him. The order of dismissal is against the principles of natural justice. He has been victimised. The II party has indulged in unfair labour practice. The provisions of Section 2(oo), 25-F, 25-G and 25-K of the I. D. Act have not been complied with. He is hale and healthy. The II party management has not considered the medical certificates produced by him and the request made by him. The action of the management is in violation of the principles of the natural justice. It is mala fide and arbitrary. He then raised an industrial dispute but the conciliation failed. He prays that he may be reinstated with all the consequential benefits.

3. The II party has filed its counter statement and inter alia, it has been contended as follows.

He was appointed as underground general labour on casual basis and daily wages. It was with effect from 27-10-1980. It is not correct that he was stopped from work with effect from 31-8-81. It is true that he was examined in the BGML Hospital and then referred to NIMHANS for medical check up on 4-9-81. The averments made in para 5 of the claim statement are denied. The manager of the mines found that he was not mentally normal and referred his case to the Chief Medical Officer. The latter replied by letter dated 17-1-89 that he had been referred to the NIMHANS on 4-9-81. After examination, the I party workman did not bring any report from the NIMHANS and the Chief Medical Officer then wrote on 11-9-81 for a detailed report. It was also found that the I party workman was obviously treated for some psychiatric problem at NIMHANS in Bangalore but he had not disclosed the same when he had appeared for pre-medical examination at the time of employment. He has concealed the said fact and had made fraudulent representation. The said representation was intentional and deliberate. Thus, he willfully misrepresented the IInd party. He did not complete his one year of probation period, since his behaviour was abnormal. The Chief Medical Officer had recommended for the termination of his employment. The management thus invoked the provisions of the terms of appointment and his service. A copy of the appointment order is enclosed at Annexure 'B'. His services were terminated by a letter dated 21-10-81. His work was not satisfactory and his services were not required. The II party is not aware of his further treatment at the NIMHANS. The action taken by the management is as per the terms of employment. He was not having a sound physique and mental balance. It is not correct that he was in continuous service. No enquiry was required for the termination of his service, when he was found not fit for work by the medical authorities for his abnormal behaviour. As he was under probationary period, the action taken by the management is proper. The action of the management was in the interest of the employee. If the management had continued to employ him for underground work, it would have been risky and hazardous to his life. He was not mentally sound. The action of the management cannot be called as victimisation or unfair labour practice. It does not amount to retrenchment. The termination is on the ground of continued illhealth. No provision of the I. D. Act has been violated, since his appointment was for underground work. There was no question of his appointing for surface work. There was no suitable

vanacy for surface work. There is surplus manpower for surface work and his case for surface work could not be considered. He did not obtain any report from the NIMHANS and did not turn up during the probationary period. The reference may be rejected.

4. During the course of the trial, the II party had moved some application for the amendment of the counter statement. On receiving objections and hearing the parties, they have been allowed on certain conditions.

5. In the rejoinder filed by the I party, it has been contended that the I party has not concealed any material fact nor has misrepresented any fact nor has committed any fraud and that the statements made by the II party are not correct.

6. An additional issue has been raised, in view of the said pleadings, as shown below.

"Whether the II party proves that it has taken action against the I party in accordance with law."

7. For the management, three witnesses have been examined and Exs. M-1 to M-8 have been marked.

8. For the workman, the workman himself and one witness have been examined and Exs. W-1 has been got marked.

9. The parties have been heard.

10. My findings on the said issue and point of reference are as follows.

#### ADDITIONAL ISSUE

11. The II party has proved that it has taken action against him in accordance with law.

#### POINT OF REFERENCE

12. The termination of the service of C. Mohanraj T. No. 155888 General Labour, Champion Reef Mine by the BGML is proper and justified. He is not entitled to any relief.

#### REASONS

#### ADDITIONAL ISSUE AND POINT OF REFERENCE

13. Briefly stated, the II party management has raised three distinct contentions: (1) that there was no satisfactory completion of the probationary period of the I party workman and the II party was under no obligation to continue his service after the probationary period of one year, (2) that the I party workman had committed an act of fraud or wilful suppression of a material fact or has committed misrepresentation regarding his health at the time of recruitment and thus there was no contract of service at all. (3) The I party workman was not mentally sound, so as to continue him for the underground mining work and not only on medical grounds, but also for continued illhealth.

14. MW-1 Sannamalige, the Personnel Manager of the II party has sworn that the I party joined the service as per Ex. M-1 on 27-10-1980 and that his probationary period was till 21-10-1981. In para 5 of his evidence, he adds that there is a term of contract that his services may be terminated without assigning any reason or that if his services were not required at all, Ex. M-1 is the order of appointment issued to him. It shows that the II party management made an offer to appoint him as a General Labour (underground) on a salary of Rs. 210 p.m. and that if the terms were acceptable to him, he should report to duty by 1-10-1980. MW-2, Mohanraj, the workman has stated that he started working in the II party on 27-10-1980. However, there is no dispute that he started working on 27th October, 1980 in the underground mines. The order of termination is at Ex. M-2. It shows that he had accepted the terms and conditions of appointment and that the probationary period was of one year and that since his work was not satisfactory, and his services were no longer required. The learned counsel for the II party has referred to the authority of workmen of the Bangalore Woollen, Cotton and Silk Mills Vs. Its Management, (Supreme Court Digest 1962 Page 22). The authority states that service of a workman can be terminated only if it

capable of being continued and if it is not capable of being continued and if it is brought to an end, it cannot be said that there is termination of service. The authority further states that if a contract requires certain physical fitness in the workman and if there is no such physical fitness to render the required service, the said fact itself brings the service to an end and that the action of the management does not amount to retrenchment. The evidence of MW-1 Sannamalige further discloses that he was referred to NIMHANS for special treatment by the Chief Medical Officer and since he did not bring any report from the NIMHANS, the Chief Medical Officer had written to the NIMHANS but no reply was received. In para 6 MW-1 further swears that because of his such mental condition, the Mines Manager had referred him to the medical authorities. In para 7, he adds that he had not worked for one year i.e. for the period of probation and that his services were terminated. In the cross-examination of MW-1, there is no challenge either to the said evidence of MW-1 or to the letter of appointment Ex. M-1 that he had been appointed as the general labour for the underground work. There is also no dispute that his probationary period was for a period of one year. In view of the aforesaid authority, it follows that if the management establishes that he was physically not fit for underground work, then it can very well be said that the management had the power not to continue his services after the probationary period came to an end.

15. The evidence of MW-3 Dr. A. N. Shankare Gowda the then Medical Officer of the BGML shows that in September 1981, he had examined the I party Mohanraj, on being referred by the Mines Manager that his behaviour was abnormal. He further states that Ex. M-6 is the letter under which he was referred. Ex. M-6 reads that Mohanraj, an underground employee was showing such behaviour (mentally) which is suspected to be abnormal and therefore he was requested to examine him and report whether he was fit to continue the underground work. The evidence of MW-3 then shows that on 5-9-81, he was referred to the NIMHANS and was treated there as an outpatient and there was one letter from the NIMHANS, but however, it was missing. In para 2, he swears that the workman himself had destroyed his medical report. The evidence of MW-3 further shows that on 17-1-81, he himself examined the workman Mohanraj with the assistance of a physician but that record is also missing. MW-3 Dr. Shankare Gowda has stated that thereafter by a letter dated 17-9-81 he recommended to the management that his service may be terminated since he was suffering from psychiatric illness. He has specifically stated that it was detrimental to the interest of the workman and also to the management, since he had been given underground work. In para 4 of his evidence, he swears that the mental condition of Mohanraj was abnormal and he gave the said opinion on the examination of his behaviour, coherence and mental ability. The management has relied upon a letter sent by the Manager of the Champion Reef. It is Ex. M-8 dated 9-9-1981. Ex. M-8 shows that the employee Mohanraj who had been referred for medical examination had come to the shaft in the morning of 9-9-81 that he had brought the hospital attendance card and that he had scribbled in the said book and therefore it was seized from him and sent to him. The C.M.O. was further requested to inform him regarding the reference made in regard to Mohanraj earlier. Ex. M-7 is a letter by the CMO to the Mines Manager of Champion Reefs. It is dated 17-9-1981. It shows that with reference to the letter dated 9-9-1981 from the Manager of the Champion Reef Mines, MW-3 Dr. Shankare Gowda has stated that the workman Mohanraj was referred to the NIMHANS on 4-9-81 but he had not brought any report and again a letter dated 11-9-81 had been sent, but there was no reply, but however, it was learnt that he had been previously treated for psychiatric problems of NIMHANS but he did not disclose the said fact when he had come there for pre-employment medical examination. The letter of appointment, Ex. M-1 itself shows that the offer had been made to him subject to satisfactory medical examination by the Chief Medical Officer. MW-1 Mohanraj has stated in Para 26 of his evidence that the management doctors did not ask him about his admission to the NIMHANS in 1974 and he did not tell them about it. The submission is manifest and speaks for itself that when he was examined by the BGML doctors at the time of appointment he did not disclose that he had been once admitted to NIMHANS in

1974. The said fact was within the special knowledge of only the workman and since the offer made to him was for underground work, it was obligatory on his part to disclose the said fact. In my view, it does not lie in the mouth of the I party workman to say that because the doctors of the BGML did not ask him, he did not disclose that fact. It cannot be forgotten that under Ex. M-1 the offer made to him was for underground work in the mines. The medical evidence produced before me indicates that there can be relapse of the said mental illness at any unpredictable time. Under such circumstances, I find that not disclosing the said fact amounts to misrepresentation and that an agreement which is wanted by fraud is void under Section 23 or in the last when free consent is obtained by misrepresentation, it would be voidable under Section 19 of the Indian Contract Act. The evidence of MW-1, MW-3, the aforesaid admission made by W-1 and the documents at Exs. M-1 to M-8 show that the management was justified in not continuing him in service after the period of probation came to an end and even otherwise there was no valid contract of service and if he has been stopped from work, it cannot be said that the management was not justified in its action.

6. In order to justify that a person having such a mental abnormality cannot be continued in underground mining work, the management has relied upon the evidence of not only of MW-3 Dr. Shankare Gowda, the then C.M.O. but also that of MW-2 Dr. Srinivasan, an Associate Professor in the NIMHANS. MW-3 Shankare Gowda has stated in para 8 that underground work involves tunnelling, mining, handling of explosives and usually it is a team work. He further states that if one member of the team is not co-operative with the others, then the job becomes hazardous to the entire team. In unambiguous terms MW-3 has sworn that at that time, he was not fit for the underground work. In the cross-examination, he has been questioned that he is only a general surgeon and he cannot give evidence regarding such mental cases. The doctor has refuted the statement. He has asserted that he has dealt with such cases. Much of the cross-examination of MW-3 is directed to show that there was no justification for the II party to plead that the records are misplaced or lost. It is not a case of a solitary witness giving evidence regarding the mental condition of a workman. The evidence of MW-3 Shankare Gowda is supported by convincing documentary evidence at Exs. M-1 to M-8 and even if Exs. M-3 to M-8 are not accepted for their face value, there cannot be any objection to accept the evidence of MW-2 Dr. Srinivasan. The evidence of MW-2 Dr. Srinivasan has substantiated the evidence of MW-3 Dr. A. N. Shankare Gowda in all the material points. In the cross-examination MW-3, (in para 23) has been questioned with reference to the letter dated 13-9-83, Ex. W-1. He states that he does not remember whether he had received any such letter. The letter dated 13-9-83 points to the fact that Mohanraj was admitted in the Nimbans from 27-7-83 to 5-8-83, that he had been treated for manic-depressive illness manic type and that he was again examined on 13-9-83 and he was found to be free from symptoms. However, Ex. W-1 further shows that he was advised to continue treatment as an outpatient to attend Nimbans once in a month on a Tuesday and to do duties on the surface. The pertinent question is not whether the workman Mohanraj was fit to do any surface work on 13-9-83, the date of Ex. W-1, but it is whether the management was justified in not continuing his services after one year of probation on 27-10-1981. Ex. M-1 is thus of no assistance to the workman. On the contrary, it lends support to the case of the management that he had been examined for manic depressive illness of manic type as an outpatient since 13-10-81. If he had been treated for the said mental disease from 13-10-81, it cannot therefore be said that the management was not justified in not continuing him in service on 27-10-1981.

17. The evidence of MW-2 Dr. Srinivasan of NIMHANS shows that the workman Mohanraj was under his care from 13-10-1981. He further states that Mohanraj came before him on 13-10-81 and then he was treated as an outpatient. In Para 4 of the claim statement itself, it has been admitted by the I party Mohanraj that he was sent to NIMHANS by the II party management on 5-9-81 for medical check-up along with one Shri Veeraswamy, a ward boy of the BGML hospital. The workman himself concedes in Para 19 of his evidence

Dr. Shankare Gowda examined him and then referred him to NIMHANS and a ward boy had been sent with him to NIMHANS. However, he states that the ward boy was one Ramaswamy. He further admits that on another occasion, he had been sent to NIMHANS along with one Natarajan. The admissions made in the claim statement and by the workman in the witness box as shown above fortify the evidence of MW-3 Dr. Shankare Gowda that on 5-9-81, he sent the workman Mohanraj to NIMHANS after himself examining him in that connection. The evidence of MW-2 Dr. Srinivasan indicates that when he examined him on 13-10-81, he found that the workman was complaining of sleeplessness, irrelevant talk, not taking food properly, experiencing visual hallucinations and also delusions. The doctor has stated that the workman was suffering from major psychosis. His evidence further discloses that as per the history of the case, it was found that Mohanraj had been treated earlier in NIMHANS and they had placed the concerned file of 4683 of 1974. The said file has been marked as Ex. M-4. Ex. M-4 discloses that the workman had been accompanied by his brother, that he complained that the duration of the illness was two months and the symptoms then exhibited were as follows :

- (1) Sleeps too much.
- (2) Not interested in personal hygiene.
- (3) Not interested in food also and takes food only if forced.
- (4) When laughs himself. Looks abnormal.
- (5) Simply sits at home, holding his head.

18. The record at Ex. M-4 further shows that on 9-9-1974 one Norma had recorded the history and other particulars of the I party on 9-9-1974 and that on the said occasion he had continued the treatment till 21-4-1975. Ex. M-4 itself proves that from 9-9-74 to 21-4-75, he was having treatment for some mental disease. The evidence of MW-2 Dr. Srinivasan shows that Ex. M-5 at page 13 is the record maintained by them for the period of treatment from 13-10-1981. In para 23 of his evidence, MW-2 states that his case was of depression or Schizophrenia. He further adds that it was a case of manic depressive psychosis. The doctor explains that it is of two phases. He explains that in the first phase, he may feel highly happy, talks highly of himself, associating himself with great people, spends more money, shows lack of respect and discrimination to others. In the second phase, it is explained that it will be quite opposite and he may become dull, unhappy and entertain doubts of suicide. His evidence further runs that in both the phases, there will be delusions and hallucinations. The doctor categorically states that the actions of such persons, depends upon the mood they have at a certain point of time. In para 24, he further explains that the persons suffering from neurosis will be in touch with the surroundings and realities and there will be no disturbance as regards the capacity for social discrimination relating to people, whereas in case of schizophrenia, reality between himself and the environment is disturbed. A question has been put to MW-2 Dr. Srinivasan that whether such a person is capable of discharging ordinary duties of general labour such as sweeping, scavenging etc. The doctor has stated that he can discharge such duties. The doctor has stated that he has not seen any underground mine and thus it will be of no help to take into account his aforesaid statement whether a person suffering from minor psychosis can be employed for underground work. The evidence of MW-3 Shankare Gowda in that connection stands unassailable. In para 32, MW-2 Dr. Srinivasan has sworn that he had sent Mohanraj again on 10-11-81 and from 13-10-81 to 24-1-81, he was ill for all practical purposes. As observed earlier, the relevant point of time would be whether the management was justified in not continuing him in service after 26-10-81 when his one year probationary period came to an end. The evidence of MW-2 Dr. Srinivasan in para 32, as shown above proves for the management that it was justified. The record at Ex. M-5 on page 13 shows that the I party workman had gone to the Nimbans on 13-10-81. The outpatient slip at page 11 discloses that the doctors at Nimbans asked him to appear on 10-11-81 for detailed work-up. The notings of 13-10-81 are to be found on page 25 of Ex. M-5. It shows that though he

had been called for detailed work-up, he had gone alone and therefore he was given another date for detailed work-up on 10-11-81. The notings of 10-11-84 are to be found from pages 27 to 34 of Ex. M-5. On page 30 of Ex. M-5, it is shown under the heading "Medical History" that he had an accident in the year 1971, when he had jumped down from running lorry and had sustained the head injury for which he was treated. Under the heading previous mental illness on page 30, it has been shown that after the accident, the patient exhibited abnormal behaviour, talking to self, removing his clothes, running away naked, irritable and attempted suicide twice. Under the heading history of present illness on page 31, it has been shown that he was normal one-and-a-half years back, but later he started complaining of sleeplessness, talking to himself for about two hours and then going to sleep. He talks "..... I will be union president.....". He wakes up early in the morning. At times he gets angry and starts beating. It is further stated that he had been brought to Nimhans on an earlier occasion for the same episode and he had been treated. The observations made on 10-11-1981 reinforce the evidence of MW-2 Dr. Srinivasan at Para 32 that between 13-10-81 and 24-11-81, he was ill for all practical purposes. The fact that he was showing good improvement as written in the letter Ex. M-3 dt. 3-2-1982 is of little significance to find out whether the management was justified in not continuing his service in October, 1981. What is more important is the admissions of the workman himself in that regard. In para 18 of his evidence, WW-1, the workman states that he was the president of world party and he had opened one office in that connection. The said evidence in para 18 adds considerable force to the evidence of MW-2 Dr. Srinivasan and the medical record at Ex. M-5.

19. The workman has examined one Dr. S. M. Channa Basavanna, Dean and Professor of Psychiatry in Nimhans. The evidence of MW-1 Dr. S. M. Channa Basavanna at the very outset in the examination-in-chief shows that he had seen the workman Mohanraj only on 10-8-88 when he was examined in the court. His evidence is on the point that on 13-8-84, he had received a letter from the Asst. Labour Commissioner and it is at page 87 of Ex. M-5. He further states that he sent his reply as per letter dated 22-10-84 and it is at page 89. The letter dt. 16-10-84 by the A.L.C. at page 85 of Ex. M-5 shows that he had requested the doctor to issue a certificate of fitness for the purpose of re-employment or reinstatement. On page 89, there is an office copy of the letter dated 22-10-84. The letter reads that on going through the file, WW-1 Dr. Channa Basavanna found that Senior consultant had issued a fitness certificate on 13-9-83, but no action had been taken by the BGML and therefore there was no guarantee that they will accept any other certificate, even if he issues the same. WW-1 has however stated that if need be the workman may be subjected to medical examination and thereafter a certificate will be issued. In the first instance, it can be made out from the record that the representation made by the workman before the A.L.C. that the doctors at Nimhans had not responded in a proper manner was not correct. As regards the letters and treatment of 1984, they cannot have any better value than Ex. M-3 which is of February 1982. In para 6 of his evidence WW-1 Dr. S. N. Channa Basavanna states that in 1983, a certificate had been given to the workman as to be found in page 77. Page 77 is marked as Ex. W-1, as to how Ex. W-1 is of no help to the workman is discussed separately. The rest of the evidence of WW-1 Dr. Channa Basavanna shows that a person suffering from psycho-neurosis on discharge duties such as sweeping etc. It would be futile to consider the case of the I party whether he was capable of working as a sweeper or a peon on surface, when he had been appointed as an underground worker in the mines. The pertinent point is not whether he was capable of working as a peon or a sweeper in October 1981, but whether he was physically fit to perform the underground mining work at the time when his probationary period came to an end in October 1981. To put it briefly, the evidence of WW1 on the point whether the workman was capable of doing any surface work in 1983 as could be found in W1 does not assist the court in appreciating the evidence on the point whether the management was justified in not continuing his service in October 1981. Since it is an admitted fact that the entire

evidence given by WW1 Dr. Channa Basavanna is based only on the record Ex. M5 and since he had never seen the workman Mohanraj, until he gave evidence in the court, the said evidence cannot be preferred to that of MW- Dr. Srinivasa and MW-3 Dr. Shankare Gowda, who had personally handled the case and given advice to him.

20. The learned counsel for the II party cited the case of Imperial Tobacco Company of India Vs. Ethirai, S. (1954 II L.L.J. Page 637). The Labour Appellate Tribunal has stated that the discharge of services of a workman found mentally deranged is justified. The evidence of MW-2, Dr. Srinivasan and that of WW-1 Dr. S. M. Channa Basavanna makes it clear that one cannot be certain about the relapse and also about the duration of the illness in case of relapse. In para 25 of his evidence, WW-1 Dr. S. M. Channa Basavanna concedes that relapse is a condition where a person develop the same symptoms once again and that it may last for one week or one month, depending upon the type of psychosis. In para 20, he has conceded that cure means, a person becoming asymptomatic and remission means a particular period where he is totally asymptomatic, but the chances of recurrence will be there. He further adds that there will be certain cycles in nature where the period of remission varies from several weeks to several months or several years. He further states that average period of illness of such remission will be four to six months. In the face of such an evidence, it cannot be said that there was any wrong or mala fide act on the part of the management to hold that he had not completed his probationary period satisfactorily and he was not entitled to be continued in service.

21. The learned counsel for the I party placed before me the authority of Ram Narain Gupta Vs. Smt. Rameshwari Gupta (AIR 1988 Supreme Court Page 2260). The principle laid down in the authority is with reference to Section 13(1) (iii) of the Hindu Marriage Act. It has been enunciated that in a petition for divorce on the ground of mental disorder—mere branding of spouse as schizophrenic is not sufficient and that degree of mental disorder must be proved to be such that the other spouse cannot reasonably be expected to live with the other one. One can hardly dispute that the interpretation of the provisions of the said Act with reference to marital relationship stands entirely on a different footing than the interpretation required to be put to the case of a management contending that the services of a workman were not continued at the end of the period of probation on the ground of mental disorder. I am, therefore, of the view that the principles laid down in the authority regarding the degree of mental disorder to be proved, have no bearing to the facts of the present case.

22. The learned counsel for the I party has contended that the management has not proved that it was a case of chronic illness or that it was a case of continuous illness and therefore it is a case of retrenchment for which there was no notice no compensation and that the action of the management is in violation of Sections 25-F and 25-B of the I.D. Act. The evidence of MW-1, MW-2, MW-3 and the admissions as discerned and pointed out from the evidence of WW-1 and WW-2 to establish that it was a case of continued illness. Neither in the claim statement nor in his evidence, the workman has ever put up or has adduced any evidence to show that till 3-2-1982 he had become physically fit and on that basis he had approached the management but the management had turned down his request. Secondly, it has not been established by the workman that Ex. M-3 had been served on the management. On the back side of Ex. M-3, it has been noted that the workman had gone to the Nimhans hospital only on 7-12-1982 with a request to give him a medical fitness certificate and the doctor has stated that he had discontinued medication since three months. From the letter at page 85 of Ex. M-5 on which the workman has relied upon it can be very well made out that he approached the Assistant Labour Commissioner only in 1984, since the File No. of the A.L.C. shows as 5/36/84-A/K, suggesting that the workman had approached the A.L.C. only in 1983. The contention of the workman that he was quite fit, hale and healthy to continue to work even between October 1981

and 13-9-1983, the date of Ex. W-10 is belied by his own pleading and by his own evidence. I am, therefore, of the view that it is also a case of continued ill-health, even if it is supposed that the management was not justified in not continuing him in service after the completion of the probationary period of one year. The contention raised for the workman that his services had been terminated even before the completion of the period of one year of probation is not sustainable on two grounds. Firstly he was appointed by an order dt. 29-9-80, as could be seen from Ex. M-1 and it cannot be said that his services had been terminated prior to the one year period of probation. Secondly, the order Ex. M-2 itself makes it clear that his services were not required after the completion of the period of one year of probation, since his work was not satisfactory.

23. It was contended for the I party that as per Ex. M-2 the case of the management is only of discharge and that it cannot plead about misrepresentation, fraud or about continued ill-health. A party to a cause is entitled to put forth alternate defences or additional defences. I do not find there is any force in the said contention.

24. The learned counsel for the I party has further contended that the II party has not produced the medical record maintained by it and thus it has not proved its case. The evidence of MW-3 Dr. A. M. Shankare Gowda has proved that the said medical record is missing. No specific motive has been attributed to MW-3 Dr. Shankare Gowda or to MW-1 Samamalie to show as to why for they should suppress the record of the II party. The said contention is not available.

25. It was contended that there was no enquiry before appointment and thus the workman is not to be blamed. The fact that he had been a patient of the Nimhans for several months in 1974 was within the special knowledge of the workman and in order to gain employment, it was absolutely obligatory on his part to have been disclosed the said fact and since he had suppressed the same, it is obvious that no duty was cast on the employer to question a person whether he had any mental disorder previously. There is no force in the said contention.

26. In para 4 of the claim statement, it has been described that on 5-9-81 the workman had been referred to Nimhans by the BGML hospital and he had been sent along with the ward boy by name Veeraswamy. In para 5 of the claim statement immediately thereafter it had been stated that on 5-2-1983 one Dr. Gowda of Nimhans hospital gave a letter to the Mines Manager N. Palani to give him surface job but unfortunately the II party did not give any surface job. In para 6 of the claim, it has been then stated that in the meantime the I party workman had again fell sick and was undergoing treatment at Nimhans. He adds that one Dr. Natarajan, APM, Nundydroog Mine had admitted him to Nimhans on 7-7-83 and on 5-8-83 and on 13-9-83, he was given certificates asking the management to continue him in surface. It suffices to hold that from the contents of Paras 4, 5 and 6 of the claim statement itself, it emerges that till 5-8-83 the I party workman was not at all able to attend to any work either surface or underground. From the pleading itself, it is obvious that the management was, even otherwise justified in not keeping him in service on the ground of continued ill health.

27. Looking from any angle, I find that the management of the Bharat Gold Mines Limited was justified in not continuing him in service with effect from 31st August, 1981 and that he is not entitled to any relief.

8. In the result, an award is passed to the effect that the management of Bharat Gold Mines Limited, Kolar Gold Field was justified in not continuing the I party Shri C. Mohanraj T. No. 135888, general labour, Champion Reef Mine in service with effect from 31-8-1981 and that he is not entitled to any relief.

(Dictated to the Stenographer, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

[No. L-43012/2/85-D.III(B)]

प्रा० आ० 801.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार राजहारा आयरन और स्टील प्लांट के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

S.O. 801.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Rajhara Iron Ore Mines of Bhilai Steel Plant and their workmen, which was received by the Central Government on the 27-3-89.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,  
CUM LABOUR COURT JABALPUR

Case No. CGIT[LC(R)(99)]1987

#### PARTIES :

Employers in relation to the management of Rajhara Mechanised Mines of Bhilai Steel Plant, P.O. Bhilai District-Durg (M.P.) and their workman Shri R. S. Tiwari, Senior Shovel Operator represented through the Jt. Secretary, Hindustan Steel Employees Union (CITU), P.O. Dallirajhara, Distt.-Durg (M.P.).

#### APPEARANCES :

For Workmen—Shri K. P. G. Panicker Joint Secretary, Hindustan Steel Employees Union.

For Management—Shri D. C. Henry, Asstt. Chief Law Officer.

INDUSTRY : Steel Plant DISTRICT : DURG (M.P.).

#### AWARD

Dated the 6-2-89

By Notification No. L-26012/49A/85-D.III(B), dated 1-7-1987. The Central Government in the Ministry of Labour referred the following dispute to this Tribunal, for adjudication:—

"Whether the action of the management of Bhilai Steel Plant, District Durg (M.P.) is justified in passing an order of suspension for 4 days from 12-4-1985 to 15-4-1985 without wages on the basis of the show-cause notice No. MM/Raj./Est. III/85/401 dated 18-2-1985 against Shri R. S. Tiwari, Senior Shovel Operator, Rajhara Mechanised Mines of Bhilai Steel Plant? If not, to what relief the employee concerned is entitled?"

2. Parties filed their respective statement of claim. On 11-1-1989 Shri K. P. G. Panicker files an application on behalf of the workman which is signed by Shri Panicker and the concerned workman Shri R. S. Tiwari that the workman is not interested in continuing the proceedings and proved that the case be closed. In view of the above application I have no alternative but to give a "No Dispute" Award. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-26012/49-A/85-D.III(B)]

V. K. SHARMA, Desk Officer



नई दिल्ली, 4 अप्रैल, 1989

का० आ० 802:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व 'सर्ज वैस्टन कोल-फोल्ड्स लि० की डमुआ कोलियरी के प्रबन्धन के सम्बन्ध निर्याजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

New Delhi, the 4th April, 1989

S.O. 802.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Damua Colliery of Western Coalfields Ltd. and their workmen, which was received by the Central Government on the 29-3-1989.

## ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
CUM LABOUR COURT JABALPUR (M.P.),

Case No. CGIT/LC(R)(190)/1987

## PARTIES :

Employers in relation to the management of Damua Colliery of W.C.L. P.O. Damua, District Chhindwara and their workmen S/Shri Shyamlal, S/o Chhote, Kallram S/o Manoo and Talib Ali, Loaders represented through the Secretary (C), Bhartiya Koyala Khadan Mazdoor Sangh (BMS), Chandametta, P.O. Palachoural. District-Chhindwara (M.P.).

## APPEARANCES :

For Workmen—Shri S. P. Singh.

For Management—Shri Rajendra Menon, Advocate.

INDUSTRY : Coal Mines DISTRICT : Chhindwara (M.P.).

## AWARD

Dated 20-3-89

By Notification No. L-21011/2/87-D.III(B), dated 9-9-87 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the Manager, Damua Colliery of Western Coalfields Limited in not paying wages for the idle period from 22-4-86 to 11-7-86 to S/Shri Shyamlal S/o Chhote, Kallram S/o Manoo and Talib Ali, Loaders is fair and justified? If not, to what relief the above workmen are entitled?”

2. Parties have not filed their respective statement of claim till 29-11-1988 and taken so many adjournment. On 26-12-1988 Shri Rajendra Menon, Advocate, for the management filed a Memorandum of Settlement duly signed by the representative of the Management and the representative of the workmen. The terms of the Memorandum of settlement have been verified by Shri Rajendra Menon, Advocate on behalf of the management and Shri S. P. Singh on behalf of the Union/workmen. The terms of the settlement are as under:—

1. The management agreed to make payment of 50 per cent of the wages for the period from 24-4-85 to 11-7-86 to S/Shri Shyam Lal Kallram and Talib Ali. They will not get any other benefits than 50 per cent of wages of the said period.

2 They will be allowed continuity of service for the limited purpose of payment of Gratuity.

3. The management and the Union will jointly file a copy of this settlement before the Hon'ble Tribunal Jabalpur with request to give an Award in terms of settlement.

The aforementioned terms of settlement appear to be fair, just and in the interest of the workmen concerned. I therefore, record my award in terms of the settlement and make no order as to costs.

V. S. YADAV, Presiding Officer  
[No. L-21011/2/87-D.III(B)]

का० आ० 803:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व 'सर्ज वैस्टन कोल-फोल्ड्स लि० की ई. डी. सो कोलियरी पन्च ऐरिया के प्रबन्धन के सम्बन्ध निर्याजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 803.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of EDC Colliery of M/s. Western Coalfields Ltd., Pench Area and their workmen, which was received by the Central Government on the 29-3-1989.

## ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
CUM LABOUR COURT JABALPUR (M.P.),

Case No. CGIT/LC(R)(5) of 1988

## PARTIES :

Employers in relation to the management of E.D.C. Colliery of W.C.L., Pench Area, P.O. Parasia, District-Chhindwara and their workman Smt. Kushambai W/O Fool Singh, daughter-in-law of Smt. Shyamkali W/O Late Chitoo represented through the General Secretary, R. K. K. M.S. (INTUC), P.O. Chandametta, District-Chhindwara (M.P.).

## APPEARANCES :

For Union—Shri S. K. Rao, Advocate.

For Management—Shri Rajendra Menon Advocate.

INDUSTRY : Coal Mines DISTRICT : Chhindwara (M.P.)

## AWARD

Dated : 27-12-1988

The Central Government in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication vide Notification No. L-21012/84/87-D.III(B), dated 14-12-1987:—

“Whether the action of the management of E.D.C. Colliery of WCL, Pench Area, P.O. Parasia, Dist.-Chhindwara, in not giving employment as dependent to Smt. Kushambai W/o Fool Singh, daughter-in-law of Smt. Shyamkali W/o Late Chaitoo, as ex-employee of the aforesaid Colliery is justified? If no, what relief the concerned workman is entitled to?”

In the instant case parties were directed to file their respective statement of claim and they took several adjournment for filing the same. On 27-9-1988 Counsel for the management filed a Memorandum of Settlement dated 1-12-1987 duly signed by S/Shri S. B. Katiyar, C. L. Jaiswal on behalf of the management and workman concerned Smt. Kushambai, S/Shri Shyamlal Valmik and Jabbar Khan on behalf

of the Union R.K.K.M.S. (INTUC), Shri Rajendra Menon, Advocate for the management and Shri S. K. Rao, Advocate for the Union verified the settlement.

I have perused the terms of settlement which are as under:—

1. Smt. Kushma Bai W/O Shri Phoolchand will be given employment as a piece rated worker in Pench Area and shall be posted in the collieries/units as per the requirement.
2. The Union agrees not to demand any other employment for any dependant of Smt. Sayamkali Bai, Ex-Smale Picker.
3. This finally resolves the dispute and no claim or any other benefits will be claimed in respect of this dispute in any forum.
4. This settlement shall not be quoted as precedent. The above terms of settlement to my mind are fair, just and in the interest of the workmen. Therefore I accept the same and give my award in terms of the aforementioned settlement. No order as to costs.

V. S. YADAV, Presiding Officer  
[No. L-21012/84/87-D.III(B)]

कां प्रो 804 :—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व साहजपुर एरिया मैसर्स साउथ ईस्टर्न कोलफील्ड्स लि. के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 804.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sohagpur Area of M/s. South Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on the 29-3-1989

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
CUM LABOUR COURT JABALPUR (M.P.),

Case No. CGIT/LC(R)(115)/88

#### PARTIES :

Employers in relation to the management of Sohagpur Area of M/s. S.E.C. Ltd., P.O. Dhanpuri, Dist.—Shahdol (M.P.) and their workman Shri A. D. Majhila, Clerk Grade-I, Burhar Central Stores, P.O. Dhanpuri, Dist.—Shahdol (M.P.).

#### APPEARANCES :

For Workman—Shri R. C. Shrivastava, Advocate.

For Management—Shri Rajendra Menon, Advocate.

INDUSTRY : Coal Mines DISTRICT : Shahdol (M.P.).

#### AWARD

Dated : 27-2-89

By Notification No. L-22012/59/88-D-2(b) D-4 (B) dated the 2nd November, 1988 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal for adjudication:—

“Whether the action of the management of General Manager, Sohagpur Area of M/s. S.E.C. Ltd., P.O. Dhanpuri, Dist.—Shahdol in dismissing their workman Shri A. D. Majhila, Clerk Grade-I, Burhar

Central Stores, is legal and justified? If not, to what relief the workman concerned is entitled and from what date?”

2. Neither party filed their respective statement of claim. On 3-1-1989 Shri Rajendra Menon, Advocate, for management filed a Memorandum of settlement duly signed by the concerned workman Shri A. D. Majhila and the General Manager, Sohagpur Area, SECL, Dhanpuri Colliery on behalf of the management. Thereafter the case was fixed for verification of settlement on 3-2-1989. On that date Shri Rajendra Menon, Advocate on behalf of the management and Shri R. C. Shrivastava Advocate and the workman verified the settlement.

3. I have gone through the terms of settlement as incorporated in the Memorandum of Settlement which are reproduced below:—

#### TERMS OF SETTLEMENT

1. That Shri A. D. Majhila is reinstated against the original post with immediate effect.
2. That the period of his unemployment will be treated as “Dies non;”
3. That he will have no claim what-so-ever for his idle period;
4. That he will have continuity of service for the purpose of Gratuity;
5. That a copy of the settlement will be forwarded jointly by the Management and Union to all concerned, under Rule 58(4) of the Industrial Disputes Rules, 1957;
6. That it is also agreed that both the parties will jointly submit before the Hon'ble Tribunal the above settlement so that the Tribunal can pass necessary consent orders.

The aforementioned terms of settlement appear to be fair, just and in the interest of the workman concerned. I therefore record my award in terms of the settlement and make no order as to costs.

V. S. YADAV, Presiding Officer  
[No. L-22012/59/88-D.IV(B)]

का.सा. 805.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स वेस्टर्न कोलफील्ड्स लिम. की डुमन हिल कोलियरी के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 805.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Duman Hill Colliery of Western Coalfields Ltd. and their workmen, which was received by the Central Government on the 29-3-1989.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(57)/1987

#### PARTIES :

Employers in relation to the management of Duman Hill Group of Mining, P.O. Duman Hill Colliery, Dist. Surguja (M.P.) and their workman Shri Vasudeo Pande, represented by the Surguja Colliery Labour Union, P.O. West Chirindri Colliery, Dist. Surguja (M.P.).



## APPEARANCES :

For Workman—None.

For Management—Shri Raendra Menon, Advocate.

INDUSTRY : Coal Mining DISTRICT : Surguja (M.P.)

## AWARD

Dated : 2-11-1988

The Central Government in the Ministry of Labour vide Notification No. L-22012/23/86-D.V. dated 23rd April, 1987 referred the following dispute to this Tribunal, for adjudication:—

“Whether the termination of the services of Shri Vasudeo Pandey by the management of Duman Hill Colliery of Western Coalfields Limited P.O. Duman Hill Colliery, District Surguja (M.P.) vide letter No. WCL/DCME/DH-NCC/Lab-Displ/9051-57 dated 11th June, 84 is justified? If not, what relief is the worker entitled to?”

2. In this case parties did not file their respective statement of claim. On 15-12-1987 Counsel for the management filed a Memorandum of Settlement duly signed by Shri B. S. Sahota, Dy. Chief Mining Engineer, Duman Hill Group of Mines, S.E.C.Ltd. Chirimiri Area on behalf of the management and Shri Goverdhan Singh, General Secretary SCLU-(AITUC) Chirimiri Area (MP) on behalf of the workman. On this date also none was present to verify the settlement on behalf of the workman. Therefore another date was given to the Union/workman to verify the settlement, but none appeared on behalf of the workman till 24-6-1988. Therefore Counsel for the management verified the settlement and the case was closed. The terms of the settlement duly arrived at between the parties are as under :—

Case of Shri Basudeo and five others Casual employees was under discussion at Company level meetings with the Union under IR system. As per the decision taken at Co. level, all six casuals have been given employment in the Co. as per Office Order No. SECL/CM/DH/Employment/13969-86 dated 6/8-10-86 i.e. from the date of issue of the said office order. As such the case of Sri Basudeo Pandey stands as withdrawn from the conciliation.

From the above terms of settlement it appears that the workman concerned, Shri Basudeo Pandey, have already been given employment in the Company. This fact was also informed by the management vide letter dated June 28, 1987 enclosing therewith an office order dated 3-10-86 which shows that the workman concerned including five other casuals have been directed to report for duties to the Manager, Duman Hill Colliery. Therefore there is no dispute left between the management and the Union/workman concerned. This reference therefore becomes infructuous. I therefore record a 'no dispute' award in the present reference No order as to costs.

V. S. YADAV, Presiding Officer  
[No. L-22012/23/86-D.V.]

का.प्र. 806.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व सैतर्ज साउथ ईस्टर्न कोलफील्ड्स लिमि. की कुरेमिया कोलियरी के प्रबन्धनस्थ के सम्बन्ध नि-योजकों और उनके कर्मचारों के बीच, अनुवर्ध में निषिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 806.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kurasia Colliery of M/s. South Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on the 29-3-1989.

## ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(19)/1987

## PARTIES :

Employers in relation to the management of Kurasia Colliery of S. E. C. Limited, District Surguja (M.P.) and their workman. Shri Amir Prasad Khariyare S/o Nathu-Ex. Mazdoor, represented through the Koyla Sharmik Sangh (CITU) P.O. Kurasia Colliery, District Surguja (M.P.).

## APPEARANCES :

For Workman/Union—Shri R. K. Gupta, Advocate.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mining DISTRICT : Surguja (M.P.)

## AWARD

Jabalpur, the 14th September, 1988

The Central Government in the Ministry of Labour vide its Notification No. L-21012/27/86-D. III(B) dated 19th January, 1987 referred the following dispute to this Tribunal, for adjudication :—

“Whether the dismissal of Shri Amir Prasad Khariyare S/o Nathu, Ex-Mazdoor category I w.e.f. 18/22-09-1985 by the Dy. Chief Mining Engineer, Kurasia Colliery of Chirimiri Area of S. E. C. Limited, vide their letter No. KC/DCME/EXPI/14863/73, dated 18/22nd September, 85; is justified? If not, to what relief the workman is entitled for?”

2. Non-controversial facts of the case are that Shri Amir Prasad Khariyare (hereinafter referred to as the workman) was working as Category I Mazdoor, Loco Shed of Kurasia Colliery. He was charge-sheeted by the Superintendent (M), Manager, Kurasia Colliery on 8-2-1984 (Ex. M/1) :—

“1. that it has been reported against you that you were on sick from 20-1-1984 and you were declared fit from 28-1-1984 and since 28-1-1984 you are not turning up to your duty, place and have been arranging to stop the work and indisorderly and riotous behaviour in the Colliery. It is also on record that due to your instigation, our mine was stopped to work on 1-2-1984 from 7.00 a.m. to 4.00 p.m. by which there was a loss of production to the tune of 600 tonnes and 200 tonnes coal despatch from quarry.

2. that you are absentsing yourself from your duties for more than ten days without any permission or information to your superiors.”

3. His reply to show cause notice was found unsatisfactory therefore a domestic enquiry was ordered to be instituted and Shri Baldeo Singh, Colliery Manager, Sonawani Incline, was appointed Enquiry officer and Shri D. Kumar was appointed management's representative while Shri H.L. Das, U.D.C. of Kurasia Colliery a co-worker was to assist the workman in the enquiry. The enquiry was held during 8-6-84 to 14-3-85. Management examined seven witnesses and relied on various documents, and the workman examined four witness in defence. Enquiry Officer gave his findings on 28-4-1895 that the charges are proved against the workman. The Disciplinary Authority dismissed him from service vide order dated 20/22-9-1984. After the failure of conciliation this reference has been made by the Ministry of Labour to this Tribunal, for adjudication.

4. I framed the following issues :—

## ISSUES

1. Whether the enquiry is proper and legal?

2. Whether the management is entitled to lead evidence before this Tribunal ?
3. Whether the punishment awarded is proper and legal ?
4. Whether the termination action taken against the workman is justified on facts of the case ?
5. Relief and costs.

5. On 13-10-1987 Shri R. K. Gupta, Counsel for the Union/workman stated that he wants to argue on the perversity along with impropriety and illegality of the findings and the Advocate for the management, Shri P. S. Nair, had no objection and consented to argue all the issues on 14-10-1987. Parties were therefore heard on all the issues. Management has also filed written arguments and my findings with reasons are as under :—

6. Findings.—Issue Nos. 1 to 5:—I have perused the domestic enquiry record. Learned Counsel for the workman has challenged the domestic enquiry on the following grounds alone :—

1. That the charge is not specific as it does not give the dates specially during which date the workman remained absent.
2. The alleged activities of the workman beyond duty hours and during his absence does not construe misconduct under the Standing Orders.
3. There is no evidence to connect the workman with the alleged misconduct and as such the findings of the Enquiry Officer and the punishment awarded by the Disciplinary Authority are perverse.
4. The workman has been punished for the union activities therefore it amounts to victimisation and unfair labour practice.
5. In any way the punishment is not commensurate with the alleged offence.

7. I have already reproduced the charges above. It clearly says "you were sick from 20-1-1984 and you were declared fit from 28-1-84 and since 28-1-1984 you are not turning upto your duty place". Thus it cannot be said that the charge is not specifically mentioned the dates. The charge further says "and have been arranging to stop the work and indisorderly and riotous behaviour in the colliery. It is also on record that due to your instigation our mine was stopped to work on 1-2-84 from 7 a.m. to 4 p. m. by which there was a loss of production to the tune of 600 tonnes and 200 tonnes coal despatch from quarry". Thus the first part of the charge give the date from which he absented himself i.e. from 28-1-84 and the second part of the charge gives misconduct of the workman i.e. instigation at his instant which resulted in the loss which is occasioned to the management thereby. Thus the first charge covers the act of misconduct under Cl. 17(1), (u) & (q) of Certified Standing Orders of Coal Mines, N.C.D.C. Ltd. The second charge is "you are absenting yourself from your duties for more than ten days without any permission or information to your superiors" covers Cl. (n) of Clause 17 of the Standing Orders. As already pointed out date was already mentioned in the first part of the charge that the absented himself from 28-1-1984 and the second party says that this absence was for more than 10 days and that too without information or permission from the superior. Thus reading both the charges together it is crystal clear that it give the specific date and the facts necessary to construe misconduct instigation and the loss occasioned to the management in breach of Mines Act 1952, Rules and Regulations and Bye-laws and the Standing Orders in this regard.

8. Next I will take up ground no. 2 and 3 since they are interconnected and involved appreciation of evidence on record.

9. In support of the case management got 33 documents exhibited from the witnesses before the Enquiry Officer. Management's witness no. 1 was Edward Khudson who worked as a clerk. He has proved attendance record. His statement

is that the workman was on privilege leave from 12-1-84 to 18-1-84 and he should have joined on 19-1-1984 but he did not turn up and he obtained sick leave from 20-1-84 to 27-1-84. Therefore he should have joined on 28-1-84, but he did not join his duty and remained absent thereafter till he was suspended on 6-2-84. He neither sent any information nor any application for leave. Next witness is Sita Samal Vijay Mukherjee, U.P.L. (E & M) Section. His version is that after suspension from 9th February 84 the workman did not attend the office. He has been therefore marked absent from 9-2-84 to 25-2-84. Thus these two witnesses are regarding absence of workman and nothing has been brought about in their cross-examination to disbelieve them. Thus from the evidence it is proved that the workman remained absent from 28-1-1984 without intimation or necessary permission. This fact has also been pointed by the Enquiry Officer in his report at page 5 (page 229 of the domestic enquiry) — "regarding unauthorised absence of the AW from duty for over 10 days, he himself admitted in his statement (page 149-150) that he was on the sick list upto 27-1-84 and after taking illness certificate from the colliery doctor, he did not go to join his duties and instead sent his father and a leave application to the mine through his father, the DW 1. He further stated that between 28-1-84 and 5-2-84 he was sitting on machine hunger strike on the instructions of his union bosses and thereafter he was taken to police custody. He also admitted that after coming back on 6-2-84 again he did not join his duties and again under instructions from union's senior officials to forcibly stop Korusia under ground mine on 8-2-84 by squatting on the loco track till the blockade was removed by the police the next day their list of the AW along with others". The Enquiry Officer further goes on to say "neither the Management's evidence nor the AW's defence witnesses nor the AW himself ever produced any clue to demonstrate that any permission was granted by the management or Korusia Colliery for the AW to absent himself from duty from 28-1-84 to 6-2-84 (12 days) or even thereafter. The AW could not produce any evidence of his leave application having been submitted at all to his work in charge or in the office of the head of his department." The Enquiry Officer further goes on to say that the alleged carbon copy of his application EX. NO. 50 at page 219 does not bear any receipt to support his contention. In view of the statement given by M.W. 1 the plea of the workman in this regard was disbelieved by the Enquiry Officer and to my mind rightly so. His plea that he had sent his application for leave through his father is not borne out by any reliable evidence. Thus his unauthorised absence without permission from 28-1-84 to 6-2-84 for 12 days is proved and the finding of the Enquiry Officer in this regard cannot said to be without any evidence or perverse. The defence version in this regard has also been rightly disbelieved for cogent reasons.

10. I will take up the contention of the learned Counsel for the workman/union that the finding of the Enquiry Officer are without any evidence and perverse. In this regard learned Counsel for the workman has relied on the statement of Ramji Pande (M.W. 5) para 48 and M.W. 4, Mewa Lal statement at page 61, 62 and 63 and documents Ex. 16, 19, 21 and 22. In this connection, it is pertinent to note that the allegations against the workman were and he was also charged with the same that he instigated workers so that they committed act of indiscipline, insubordination and riotous behaviour i.e. relay hunger strike, hunger strike and entry into the colliery office which resulted in loss to the management. Ramji Pande (M.W. 3) is the Security Guard (deposition from page 47 to 54) and Mewa Singh (M.W. 4) Security Sub-Inspector (deposition at page 55 onwards). Both these witnesses being the security staff were present at various occasions and they have given statement ranging over a long period. Naturally their evidence relates to the time at which they witnessed the particular incident. Therefore their statements have to be read as a whole and also keeping in view the lapse of memory after passage of time. Shri Ramji Pande (M.W. 3) at page 48 had deposed that on 1-2-84 there was arrested on 5-2-84. Therefore if he honestly admitted in had accompanied. He has further stated that on 28-1-84 the workman sat on hunger strike and continued to do so till he was arrested on 5-2-84. Therefore if he honestly admitted in his statement that the workman, Amir Prasad, was not present with the procession or at the mouth of the mine it does not mean that he has not stated anything incriminating against

the workman. The fact that the workman was sitting on hunger strike and he was the organiser of the strike, is enough to prove instigation. This fact finds further support from the statement of Mewa Singh (M.W. 4) at Page 61 onwards wherein he has stated that on 1-2-84 on the instigation of the workman, Amir Prasad, strikers went and sat on the loco line from 8 a.m. to 4 p.m. till the police intervened. The workers of Mahua Dafai and Ita Dafai were ordered to vacate the colliery hutments by the management with the help of other unions. Therefore in order to gain popularity and to obstruct the work workman Amir Prasad instigated the workers from 11-1-84 for strike, hunger strike etc. He gave inflammatory speeches and took procession upto the office and sent them to Dy. Chief Mining Engineer, Kurasia Kokhari Underground Mine. According to him the workman, Shri Amir Prasad was himself sitting on hunger strike and from there he was addressing the crowd and telling them that he is dying for them and they should march forward, as a result of which strikers went and sat on the loco line of which he had already produced the photographs. At page 63 he has clearly stated that the workman Shri Amir Prasad was the actor and director of all these activities regarding which he had submitted his report.

11. In view of this evidence the contention of the learned Counsel for the workman that there is no evidence against the workman, Amir Prasad, or that the finding of the Enquiry Officer is perverse does not hold water.

12. Learned Counsel for the Union/workman has also pointed out that the Enquiry Officer relied on hearsay evidence of Rambai (See page 9 para 4 of the enquiry report at page 225 of the proceedings). This contention is not quite correct. Learned Enquiry Officer has simply referred to the incidence in connection with the character assassination of Dy. Chief Mining Engineer. In that connection he has said as under : that the series of acts by AW or his union during the entire period such as violent speeches, inflammatory speeches, relay hunger strike, indefinite hunger strike, stoppage of mine working and flouting the management and the State Government efforts to settle the grievance of unauthorised hutments dwellers of Ita and Mahua Dafai in an amicable manner through the Committee set up for the purpose by the Collector, district Surguja at the instance of Madhya Pradesh Government, Department of Housing and Environment, attempt to gherao the Dy. Chief Mining Engineer, Kurasia Colliery and attempt at his character assassination by lodging a suit in the Court by a harijan lady, Ram Bai who was not a resident of the affected defais, but was hired by the AW or his Union". From the above, it is crystal clear that learned Enquiry Officer has not relied on hearsay statement but he has only cited series of acts of the accused workman and his union. Therefore it cannot be said that he relied on hearsay evidence. Any way it is a domestic enquiry and an officer holding a domestic enquiry cannot be expected and is not bound by the rule of Evidence Act. It is enough if he has conducted the enquiry and assessed the evidence in accordance with the principle of natural justice. To my mind learned Enquiry Officer has assessed the evidence at great length and has considered all the aspects of the case and arrived at the conclusion that from the evidence on record charges are proved. Thus it cannot be said that his findings are without evidence or perverse.

13. Next I will take up the allegations that the workman has been victimised because of union activities which is unfair labour practice. In this regard, I have given my earnest thoughts to the problem posed before me for consideration.

14. In this connection, it is pertinent to note that the liability of behaving properly is an incident of service and even when an employee is a member of the union or its office bearer, he continues to remain an employee. In this country local labour leader is able to maintain his position not because he is real and prudent leader but because he has his ears to the ground and shouts with the loudest and acts with most belligerent and gets first as it were on the band wagon to avoid losing that leadership. In fact, it should realise his own responsibility and behave in such a way that he deserves the position which he holds. He cannot simply be allowed to maintain his position by out herding herod. The workman because he is an office bearer of the union

does not enjoy any special privilege or immunity and if he is guilty of misconduct he is liable to be proceeded against. Impertinence and rude behaviour towards a superior officer is a misconduct. In one case the workman erroneously thought that he being a union leader he could with impunity, flout the authority of his superiors in any fashion he liked. Such a tendency has to be controlled with a firm hand. A trade union leader is an employee first and employee last so far as the observance of the rule of conduct and standing orders are concerned. The punishment of dismissal is not at all severe. Although union officers have no privilege to commit any misconduct with immunity but when they are charged for misconduct it is the duty of the court to be reasonably satisfied that it is not a case of victimisation for trade union activities.

15. Evidence adduced against the workman goes to show that he acted in a very rash and high handed manner for a matter which could have been amicably settled and which according to the workman was subsequently settled. Therefore to my mind the workman is himself responsible for inciting the persons belonging to his union to resort to violence and disruption of the work. Therefore I am satisfied that it is not a case of victimisation for trade union activities or of unfair labour practice, Schedule V (Ind Part) of the I. D. Act lays down the unfair labour practice on the part of the management. In fact, it is unfair labour practice on the part of the management if it causes wilful damage to employer's property connected with the industry. From the evidence it is established that the workman did the above act and thereby caused wilful damage to the employer's property which was also one of the charge against the workman. Therefore it cannot be said that it is a case of victimisation or unfair labour practice on the part of the management. In fact, it is unfair labour practice on the part of the workman concerned.

16. On these facts and circumstances of the case if the management inflicted the maximum punishment of dismissal it cannot be said that it is not commensurable with the offence or it is excessive.

17. For the reasons discussed above I hold and decide issues as under :—

That the enquiry is proper and legal and the punishment awarded to the workman is legal and proper. Finding of Enquiry Officer that the charges are proved and on that basis the punishment awarded by the management is also proper and justified on the facts of the case. In view of my above findings there is no question of giving management an opportunity to prove misconduct before this Tribunal. The workman is therefore not entitled to any relief. Consequently I answer the reference as under :—

That the dismissal of Shri Amir Prasad Kharivare Slo Nathu Ex-Mazdoor Category I w.e.f. 18/22.9.1985 by the Dy. Chief Mining Engineer, Kurasia Colliery of Chirmhi Area of S.E.C. Limited vide their letter No KCD/MA/EXPI/14863/73 dated 18/22nd September, 1985 is justified. He is not entitled to any relief. No order as to costs.

V. S. YADAV, Presiding Officer  
[No. I-21012/27/86-D, III(B)]

का.प्र. 807:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार ने सैमर्स ईस्टर्न कोलफील्ड्स लिम. की सरकार द्वारा कोलियरी कोखा एरिया के प्रबन्धन के सम्बन्ध में नियोजकों और उनके कार्यकारी के बीच, प्रबन्धन में सिद्धि औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के संघर्ष को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 807.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government In-

Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Surakachhar Colliery Korba Area, Distt. Bilaspur M/s. Western Coalfields Ltd. and their workmen, which was received by the Central Government on the 29th March, 1989.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(3) of 1986

#### PARTIES :

Employers in relation to the management of Surakachhar Colliery of Western Coalfields Limited, Korba Area, Korba, Distt. Bilaspur M.P. and their workman, Shri Lakharam, Fitter, represented through the Chatishgarh Khadan Karkhana Mazdoor Union, P.O. Banki Mongra, District Bilaspur (M.P.).

#### APPEARANCES :

For Union—Shri Rambilash Shobhnath.

For the Management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mining DISTRICT : Bilaspur (M.P.)

#### AWARD

Dated : 12-10-1988

This is a reference made by the Central Government vide Notification No. L-22012(2)/85-D.V. dated 1-1-1986/20th June, 1985 for adjudication of the following dispute:—

"Whether the management of Surakachhar Colliery, Korba Area, Distt. Bilaspur WCL is justified in demoting with effect from 16-7-1983 under order No. WCL/SAM/CH/64/4926 dated 18/19 June, 1984 from Category IV to II Shri Lakharam, Fitter, Surakachhar Colliery? If not, to what relief the workman is entitled to?"

2. The workman was charged under Clause 17(1)(i) and Cl. 17(1)(p) which reads as under:—

Cl. 17(1)(i):—Causing wilful damage to work in progress or to property of the employer.

Cl. 17(1)(p).—Leaving work without permission of sufficient reason.

The workman submitted his defend and denied the charge and the allegation. A departmental enquiry was started and Shri O. P. Meghlani, Personnel Officer, was appointed as an Enquiry Officer who submitted his report to the Sub-Area Manager and who awarded the punishment of demotion to workman on 19-6-1984.

3. I framed the following issues and gave my findings on preliminary issue No. 1 on October 24, 1986 that the enquiry was neither legal nor proper. As such it is vitiated. Thereafter I gave the management and the workman respectively an opportunity to prove misconduct or disprove it before this Tribunal:—

#### ISSUES

1. Whether the enquiry is proper and legal? Already decided on 24-10-86.
2. If not, whether the demotion of the workman is justified on facts of the case?
3. Whether the punishment awarded is proper and legal?
4. Relief and costs.

Findings : Issues No. 2 to 4 :—

4. Burden was on the management to prove misconduct. In support of the case management has examined the complainant Safruddin (M.W.1), Amar Singh (M.W.2), R. S. Pandey (M.W. 3) and Dil Bahadur (M.W.4). I will first take up

the statement of Dil Bahadur (M.W.4) since he appears to be most interested person for the management. In his cross-examination he has admitted that he was suspended in March 1987 in a theft case but he was still allowed duty on 14-4-87 and the enquiry is still pending against him. Thus he appears to have an obliged witness of the management. His version is that he was doing the Chowkidar duty of patrolling at the relevant time. Chowkidar Baklaram who was on gate duty on the incident night cried that the thief had entered in the house of Safruddin. Therefore he and Dalsahai rushed to the house of Safruddin. At that time they saw Lakharam coming running from outside. About the distance his statement is not only discrepant but it is also half contradictory. His first version is that when he saw Safruddin he was 2 Kms. away from the house of Safruddin. Thereafter he said that distance was about 150 Ft. so they ran after Lakharam and he entered in a bunker which was empty. At that time Amar Singh, R. S. Pandey and others were with him. But he admits that when Benduram picked up a Danda Lakharam said that he had also seen someone so that he also went with them to the house of Safruddin. When they reached the spot they found broken window and a danda. At that time Safruddin told them that he saw Lakharam going out of window. In his cross-examination he gave an entirely a contradictory version that according to him the house of Safruddin was only 25 Mtr. away from where they were on duty. So when they reached they saw Lakharam coming out of the court yard of house of Safruddin. When he was confronted with his earlier statement Ex. W/4 before the Magistrate falsity of his statement became apparent. He admitted that he saw Lakharam on the road walking. He had also stated that Safruddin had told him that he had seen Lakharam going out of the window of his house and that he had seen Lakharam entering the sand bunker and Benduram had picked up the Danda to hit him. Thereafter Lakharam had gone out of the house of Safruddin. But the above statement is conspicuously absent in the deposition before the Magistrate (Ex. W/4). This witness was also not examined in the domestic enquiry.

5. Next I will take up the statement of Safruddin (complainant) himself. His version is that he saw Lakharam standing inside the compound. So Lakharam took up his Chappal and ran away towards the Plant. He telephoned to Plant Chowkidar Baklaram and thereafter to Kulkarni. But both these witnesses are not examined by the management before me. According to him, after 15-20 minutes about 4-5 persons of the staff came and found Lathi and Glass lying there and they were murmuring that the thief is caught. He admitted in his statement that on the telephone he had not named the thief i.e. Lakharam. In his statement in domestic enquiry (Ex. W/1) also he had not named the thief. This fact is also admitted by him. In his statement before the Magistrate Ex. W/2 he had not stated that he had found Lakharam in his Dining room and that he had picked up his Chappal and ran away. He has also admitted in his cross-examination that the staff people came and Lakharam had also come near the fencing of his bungalow.

6. Next witness is Amar Singh. According to him, about 2.15 a.m. R. S. Pandey came shouting that the thief has entered in the house of Safruddin so they went that side and they found Lakharam running towards the Marshalling Lane. Therefore they along with R. S. Pandey, Nankuram, Maskaram, Premal went to the house of Safruddin who showed them the broken glass window and told them that the thief had entered his house. He therefore asked whether Lakharam was on duty with him and he told him that he was not and he had seen him running back and now he is living in the baloo. Unlike Dalbahadur and Safruddin this witness denied that Lakharam had gone with them to the house of Safruddin, while in his statement Ex. W/3 he had said so. According to him when he reached Ramdas and Bahadur Watchman were present along with Safruddin. In his cross-examination he clearly admitted that he had not told Lakharam that the thief has entered the house of Safruddin and Safruddin had also not told them the name of the thief. This witness and the next witness R. S. Pandey had clearly stated in their cross-examination that Safruddin had not told them the name of the thief. It is rather surprising that if Safruddin had seen the thief and identified him why he had not disclose the name of the thief to any of the persons of his staff and the neighbour. This is very unnatural on the part of Safruddin and it is enough to help the management's made up story.

7. Next witness is R. S. Pandey, Electrician (M.W.3). According to him, he was with Bakhlaram, Chowkidar on the gate, who received the telephone that the thief has entered the house of Safruddin. Therefore Bakhlaram sent Dal Sai and Dil Bahadur. After sometime there was another telephone to send more man. So he himself went. When he was going towards the Winch House he saw a person coming running so he himself and Bakhlaram went to the Winch House and told Amar Singh. Then four of them went towards the house of Safruddin. On half the way he met Lakharam. At the house of Safruddin he saw a back door window broken and a danda lying inside court yard. In his cross-examination he admitted that 7-8 persons including loashed workers had gone to the house of Safruddin. He cannot say who was the person running towards the Winch House and where he went afterwards. He had seen Lakharam but Safruddin had not told him the name of the thief.

8. Thus there are as many version as there are the witnesses. Their statements are not only self contradictory but are contradictory to each other. There are many more omissions and contradictions in their statement which I need not take up since the material once are sufficient to bely their statements even though this is a domestic enquiry and not a criminal case. Thus the story of alleged attempt theft is not proved at all.

9. The second charge against the workman was that he had left the place of his duty without premission or without sufficient cause. Firstly I have disbelieved the version of the management's witnesses. Therefore this story also does not hold water that he has left the place of his duty. Secondly, Amar Singh has admitted that duty of Lakharam was to repair the machines which were lying out. Therefore the possibility that he was out for doing his duty cannot be ruled out. Thirdly this witness has also admitted that hearing the cry of thief entering the house of Safruddin they had left without seeking the permission from shift incharge because there was none. Therefore if the workman Lakharam also left like others hearing cries it cannot be said that he left without permission or without sufficient cause. On behalf of the workman, Shri Ram Sai Davangan has been examined that Lakharam was one of the Union Secretary. On 13-4-1983 he had complained to the Union that on 25-3-1983 Safruddin has managed the theft of Company's 100 Mtr. belt and in this regard he has lodged the complaint Ex. W/15. Therefore on 27-4-83 they had sent complaint to the Union Home Minister and to the General Manager. But instead of taking any action against Safruddin (except for his transfer) one Gulab Singh Chowkidar after considerable lapse of time was charge-sheeted and Lakharam along with 27 persons were transferred but only the order of Lakharam was implemented. Another eye witness to this theft case one Atmaram, Belt Fitter (W.W.3) has been examined, who supported the workman Lakharam's statement (W.W.2). There may be some truth in this allegation that Lakharam was victimised on account of the said theft in support of which the workman had adduced numerous documents. But in his cross-examination the workman has admitted that he had not taken up his plea either in his written statement dated 21-7-82 or in his reply to the charge dated 12 & 13-8-83 (Ex. W/8). This vital omission on the part of the workman is possibly on account of strain relation with Safruddin that the workman may have prepared the defence in order to save his own skin cannot be ruled out.

10. In any case it was for the management to prove the charge which as I have already stated, they have miserably failed to prove it. Therefore it does not appear to be necessary to see whether the counter defence charge is also proved or not.

11. For the reasons discussed above, I find that from the facts of the case the management's case and the charges levelled against the workman are not proved and the punishment awarded is not proper.

12. On behalf of the workman it has also been pointed out that the charge of alleged theft in the private house of one of the official cannot said to be a misconduct under the Standing Orders of the Company. Specially looking to the fact that the workman left his place of work is also not proved. There is some substance in this argument and I see no reason to disagree with the workman. For this reason

also the misconduct as alleged and the charge is not proved. Consequently order of punishment dated 18/19 June 1984 is set aside and the workman is entitled to be posted on his original place and post with all difference of wages and allowances of Category IV and II. Consequently I decide the issues accordingly and answer the reference as under:—

That the management of Surakachhar Colliery, Korba Area, Distt. Bilaspur WCL is not justified in demoting with effect from 16-7-1983 under order No. WCL/SAM/SAK/CH/64/4926 dated 18/19 June, 1984 from Category IV to II to Shri Lakharam, Fitter, Surakachhar Colliery. He is entitled to Category IV post, wages and allowances with effect from 16-7-83 and all other ancillary benefits. No order as to costs.

V. S. YADAV, Presiding Officer  
[No. I-22012(2)/85-D.V.]

का.प्र. 808.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मेमर्ज वेस्टर्न कोल-फील्ड्स लिम. का पाषाखेरा एरिया के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 808.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Pathakhara Area Western Coalfields Ltd. and their workmen, which was received by the Central Government on the 29-3-89.

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC/(R)/30/1988

PARTIES :

Employers in relation to the management of Pathakhara Area of Western Coalfields Limited, Pathakhara, District Betul (M.P.) and their workman, Shri Anoop Singh Rajput, Asstt. Store Keeper represented through the Betul Zila Rashtriya Khadan Karamchhari Sangh C/o W.C.L. Pathakhara, District Betul (M.P.)

APPEARANCES :

For Workman : Shri S. N. Jhori Advocate.  
For Management : Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mining. DISTRICT : Betul (M.P.)

AWARD

Dated : 30-1-1989

This is a reference made by the Central Government in the Ministry of Labour vide Notification No. I-22012/81/82-D.III(B) dated 24th February 1988 for adjudication of the following dispute :—

"Whether the claim of the Betul Zila Rashtriya Khadan Karamchhari Sangh, Pathakhara for redesignating Shri Anoop Singh Rajput, Asstt Store keeper from 1-1-1975 to 31-8-1978 with consequential wage benefits etc. as per responsibilities actually shouldered by him and for further redesignation from 1-12-1981 onwards with further consequential wage benefits as per responsibility shouldered by him is justified. If yes, to what relief the workman is entitled?"

2. Facts which are not specifically denied by the management are that the Union, Betul Zila Rashtriya Khadan Karamchhari Sangh, Pathakhara (hereinafter referred to as

the Sangh) had since after sponsoring the above case merged into Rashtriya Koyla Khadan Mazdoor Sangh (Affiliated to INTUC Head Office Nagpur) of which the workman being the Secretary continued to remain the member and as such he has been impleaded as a party to the case. The General Manager, Western Coalfields Limited, Patharkhera is the employer of the workman.

The workman was initially appointed in General Category I Mazdoor in the year 1967 and he was subsequently promoted as Clerk Grade III in the year 1969. Thereafter he was promoted and regularised as Asstt. Store-keeper from 1-1-1972 and thereafter promoted as Store-keeper with effect from 1-9-1978. Since then his designation and pay scale continued till today.

4. It is also not disputed that with the increase of mines and production in Patharkhera Area there was increase in store inventory and the store staff. Patharkhera was upgraded as Area Store from August 1977. Before that it was respectively Sub-Area Stores and Colliery Stores. It is also not disputed that on the observation of A.L.C. (Ex. W/20A) the workman had filed an application under Section 33-C(2) of the I.D. Act before this Tribunal it was rejected on the ground that the application for the claim made is not maintainable under Sec. 33-C(2) of the I.D. Act (Labour Court Case No. CGIT/LC(C)(126/83).

5. The case of the workman is that the position and status of stores at Patharkhera changed and developed as follows :—

Sl. No.	Name	Area	Period
(i)	Colliery Store	For Mine No. I and Workshop.	From 1964-1972
(ii)	Sub-Area Stores	For catering to the needs of the mines and workshop in that sub-area constituted of Satpura I, Satpura II, PKI, PKII and New Baghinkund mines.	From 1972 to Aug. 1977
(iii)	Area-stores/Regional stores.	For catering to the needs of all the mines and workshops and Sobhapur Project in the region.	From Aug. 1977 onwards.

  

Total Store Personnel	Year	Store material item	
		A	B Balance inventory at the close of the year.
6	1972	3000	35 lacs
6	1974	4750	80 lacs
	1975	5373	94.83 lacs
	1976	6330	106.52 lacs
6 upto 1978	1977	6765	131.35 lacs
	1978	8040	155.89 lacs
9 present strength	1979	9230	168.50 lacs
	1980	9790	167.50 lacs
	1982	16000	357.96 lacs
	Jan. 1988	17000	812.03 lacs

The above Table will reflect the tremendous increase in work load with the change of status of the stores and with almost no appreciable change in the strength of the staff. With the expansion of the project and increase in status and work load the stores came to be divided into sections.

Upto 1970	only one issue section
Since 1973	Bifurcated in two sections—section I for spares (godown No. I) Section II for General and consumable items (godown No. II)
Since 1982	One more section—godown No. III and godown No. IV were created—No. III for receipts and No. I longwall spares section.

The workman was initially appointed as General Mazdoor in the year 1967, thereafter Clerk Gr. III in 1969, then he was given the job of Grade II Assistant Store Keeper, but his designation continued to be that of the clerk, regularised as Assistant Store Keeper from 1-1-72, promoted as Store Keeper on 1-9-78 and since 1-1-74 he is working as an independent incharge Store Keeper of Godown No. I spare parts and since 1-12-81 he is discharging the duties of senior SK. The sanctioned strength as per letter No. 8719.73 dated 7/8-7-1978 of Deputy Personnel Manager Nagpur is one Chief Store Keeper, One Senior Store Keeper, Five Store

Keeper and Four Assistant Store Keeper i.e. Eleven in all. While the present strength is only 9 persons contrary to the Organisational Chart issued by the CMM. The local management is, however, indulging in false economy and unfair labour practice and victimisation and asking the lower category workers to discharge the duties of higher category though there are posts vacant in the higher category. Since 1-1-1974 the workman has been independently working as Incharge of Spare Section but he is only designated and paid the salary of Asstt. Store Keeper. Since the time of the division of stores into different sections the workman has been individually maintaining the records and have been incharge of spare section independently but has been designated as Store Keeper. The other section is looked after by Shri M. N. Janardan and Shri S. B. Sarkar who have been designated as Senior Store Keeper and were being paid the wages of higher category. This amounts to discrimination. Subsequently also this discrimination was practised when Shri Sarkar was promoted as Senior Store Keeper though the duties of Shri Sarkar and Shri Janardan were the same as that of the workman. This discrimination was practised because the workman was Union Secretary. Therefore it amounts to unfair labour practice and victimisation, since the management failed to give him his due promotion the status and consequential benefits as under :—

- (i) though the workman Rajput was posted to discharge the duties of store keeper since 1974, he was regularised in that category on 1-9-78 and

(ii) though he was posted in place of senior store keeper Shri Sarkar on 29-11-82 he has not been designated as senior store keeper till today.

6. Management has raised certain preliminary objections that the sponsoring union had no locus standi to raise the dispute. In any case the demand is highly belated. The reference speaks about redesignation and consequential wages. Hence the reference is illegal and liable to be sent back.

7. Case of the management further is that the workman was subsequently promoted as Clerk Grade II from 1-2-1969 and thereafter he was promoted as Asstt. Store Keeper Gr-II from 1-1-1972 and again promoted as Store Keeper from 1-9-1978.

8. Further management's case is that the increase in the store inventory and status in stores has nothing to do with the redesignation and promotion which Shri Rajput, workman concerned, is claiming. He has been paid for the designation and duty which he has been discharging as per the nomenclature laid down in the Wage Board recommendations. During the period that Shri A. S. Rajput was working as Asstt. Store Keeper Grade II, Workman, Shri Rajput was initially appointed as General Mazdoor Category I in the year 1967. Even otherwise the Asstt. Store Keepers are placed in the Clerical Gr. II as per nomenclature laid down in the Wage Board recommendation. There were two persons working as Store Keeper viz. S/Shri S. B. Sarkar and M. N. Janardan. Therefore they were holding all the responsibilities of stores and Shri Rajput was working under them as Asstt. Store Keeper, till they were promoted as senior Store Keeper from 1-12-1981.

9. Even otherwise the promotion etc. are managerial function and based on experience availability of posts and recommendation of D.P.C. no person can claim promotion as of right. Therefore the claim of the workman is misconceived and is liable to be rejected.

10. Points for consideration before me are whether the claim of the said Sangh for redesignation of the workman, Shri Anoop Singh Rajput, Asstt. Store Keeper from 1-1-1975 to 31-8-1978 with consequential wage benefits etc. as per responsibilities actually shouldered by him and for further redesignation from 1-12-1981 onwards with further consequential wage benefits as per responsibilities shouldered by him is justified. If yes, to what relief the workman is entitled?

11. Before I take up the above points it appears necessary to dispose of certain preliminary objections of the management. First objection is that there was neither any resolution by the Union nor his cause has been sponsored by a substantial number of workers. Therefore the Union/Sangh has no locus standi to raise this dispute. The plea of the Sangh and the workman is that in fact this dispute was raised by 23 workmen who were also placed under the same position by the management (Please see Ex. W/20B and Ex. W/20C dated 16-10-81). As such the Sangh has raised the dispute. However, management subsequently gave necessary benefits to other workers in order to victimise this workman. To my mind the criteria for ascertaining whether the individual dispute has acquired the character of industrial dispute is whether on the date of reference the dispute was started by the union of workman as has been held in the case of Bombay Union of Journalists Vs. The Hindu (1961-II-LLJ 436 SC.). It has been further pointed out that it was only after this reference was made that the union was dissolved, and that in any case it will not affect the maintainability of this reference. In this regard, the distinction between espousal and representation has to be borne in mind as has been laid down in the case of Management of Gamon India Ltd. Vs. State of Orissa (1977 II-LLJ P.34). Learned Counsel for the management were unable to point out any provision whether a resolution of the Union is necessary for raising an industrial dispute. For the aforesaid reasons I hold that the preliminary objections are without any substance. In any case, the workman himself has been made a party of this reference. Therefore also it cannot be said that

in the absence of Union Workman as an individual cannot contest his own dispute.

12. The second objection is regarding the reference is belated. But once the Government has decided to make a reference any objection regarding it being belated cannot be entertained. In any case, the records show that the workman has been raising his dispute since a very long time (please see Ex. W/20 dated 19-10-81, 23-12-81, 28-5-75 (Ex. W/21), 15-7-81 (Ex. W/22), 9-9-77 (Ex. W/23), 22-4-78 (Ex. W/24) and 9-10-1980 (Ex. W/25) and he has come up under Section 10 of the I.D. Act after his claim under Sec. 33-C(2) of the Act was first turned down (Ex. W/22A dated 27-5-83) and subsequently by this court. Therefore, it cannot be said that there are any laches on the part of the workman.

13. Next objection is that the Government tried to adjudge themselves in the form the reference has been made. This question will be considered at the appropriate stage.

14. Coming to the merit of the case I find that in support of his claim workman, Shri A. S. Rajput, gave his own statement and relied on documents Ex. W/1 to Ex. W/28. On the other hand, management examined Senior Store Officer, Shri M. Gangadhar M.W.1) and Head of the Personnel Department, Shri D. S. Gill (M.W.2) and relied on documents Ex. M/1 to Ex. M/6. Most of the documents are common. I will, therefore, first examine the documents.

15. The contention of the management is that promotion is a managerial function and no workman can claim promotion as of right on the basis of the work-load which has increased. In this connection, it is pertinent to note that from 1964 to 1972 it was admittedly only a colliery store for Mine No. 1 and Workshop. Thereafter from 1972 to 1977 admittedly it was upgrade as a Sub-Area Store for catering the needs of the mines and workshop in the Sub-Area. Admittedly from August 1977 onwards it assumed the status of Area/Regional Store for catering the needs of all mines and workshop in the region including the other projects. Thus it is a case not of promotion but claiming higher wages on the strength of upgrading of the status of the establishment itself. It did not involve promotion as has been argued on behalf of the management in their pleading referred above. Promotion and upgradation has to be distinguished as has been held in the case of Anand Swarup Mishra Versus Indian Terpine and Rosin Co. (1977 LIC 584). As already pointed out and is not disputed that the establishments were upgraded from time to time store colliery to Sub-Area and Store Sub-Area to Area/Regional Stores. This is also apparent from the various documents on record like Ex. W/10, Ex. W/11 and Ex. W/13. In fact Ex. W/10 is the report by the staff officer of Pathkhara for the year 1981-82 dated 1-4-1981. This upgradation for shouldering higher responsibility by the staff of the stores has been reiterated in the following words:—

"Consequent to formation of Pathakhara Area in September '77, the existing Sub-Area Stores was converted into an Area Stores. The Area Stores of Pathakhara is functioning on the lines of Regional Stores, catering to the various mines of this Area. Since no colliery stores are functioning in any of the mines of this Area, the work-load of the Area/Regional Stores, Pathakhara has increased manifold. The stores materials for all classes have to be issued every day, thereby increasing the work of accounting, cardex keeping etc. This is apart from the normal work load assigned to any other regional stores functioning.

The total shortages worked out on the basis of the bare minimum requirement of Regional Stores together with the sanctioned strength and the existing manpower requirement and the additional requirement as per the organisation chart of Regional Stores are indicated as per Annexure 'A'.

It has been further mentioned in this report that "Therefore, it may kindly be seen that Patikhara Regional store



has been continuing to manage the stores work with great difficulty with the meagre strength sanctioned as above." The above report was in consonance with the rules in this regard [see page No. 5 of Store Manual, para 110 (Ex. W/16)] which in this regard says—

"The issue section will be normally under the charge of a Sr. Store Keeper or store keeper who will be directly responsible for custody of stores and their issue against valid requisitions. The section will be responsible for maintenance and preservation of stocks, for identifying of wages and despatch of material to other colonies, when called upon to do so". Similarly Clause 2.8—Custodian Responsibility of Stores Personnel—says that "the custodian responsibility for the stores held in a stores Depot will devolve upon the stores personnel employed therein, in proportion to the grade of each employee and the money value of stores entrusted to his charge". Both these rules read together go to show the Senior Store Keeper or the store keeper were supposed to be directly responsible for the work entrusted to him. Therefore the plea of the management that the workman who was holding an inferior post was paid according to his posting cannot taken to be correct. It is also apparent from Chapter VIII of Part II of Material Management Manual page 35, point 8.8. The word used is store keeper incharge. This rule clearly says that it is the store keeper who is incharge and who is to be held responsible for the work entrusted to him (Ex. W/19). Thus they were not only incharge of the section entrusted to them independently but the work allotted to them was to be in keeping with money value of the stores entrusted to his charge. The workman has stated on oath and I see no reason to disbelieve that he was holding the charge of Asstt. Store Keeper and thereafter of Store Keeper as an independent charge. This is also apparent from the fact that duties of Store Keeper/Asstt. Store Keeper are common and the difference is only whether he held charge independently or otherwise. To my mind, there is overwhelming evidence on record to prove that the workman was holding charge of the stores independently not only when he was working as Store Keeper but also when he was working as Asstt. Store Keeper or even as a Clerk.

16. Before I take up where and in what capacity the workman, Shri Rajput, was working I will like to consider the rules laid down in the above manual regarding the strength of the staff for Sub-Area Stores etc. Ex. W/1 is the statement showing the additional requirement of the stores personnel at athakhera. This shows that there was a sanctioned staff on 8-7-78 of five Store Keepers and four Assistant Store Keepers and there was short fall of four Store Keepers and nine Asstt. Store Keepers. The organisational chart for the Sub-Area (Ex. W/2) also goes to show that for various sections five store keepers and eight Asstt. Store Keepers were required and as far the Regional Store of only Panch, Kanhana, Wardha and Jhagrakhand Area which did not have excavation project six Store Keepers and eight Asstt. Store Keepers were controlling the same (Ex. W/3). In view of this position the plea of the management that the workman was given his due upgradation timely cannot be accepted as true. Documents on record clearly go to show that though he was working on a higher grade with independent responsibility, but he was not upgraded in spite of their being vacancy and shortage of staff.

17. Admittedly Sub-Area Stores was upgraded from 1972 and it was again upgraded as Area/Regional Stores in the year 1977. But in spite of this upgradation the workman was not upgraded though he was entrusted the work of higher grade. The workman was only promoted as Asstt. Store Keeper Grade II with effect from 1-1-1972 but I need not go through this initial aspect of the case since I am required to consider only case with effect from 1-1-1975. The workman was only promoted as Grade I Store Keeper with effect from 1-9-1978 though he shouldered the responsibility of upgraded higher stores as is apparent from the document on record. As already pointed out he was only promoted as Assistant Store Keeper Gr. II on 1-1-1972 but extract from the office

order dated 7-2-74 (Ex. W/4) goes to show the nomenclature of his post on 7-2-74 was given as ASK by the department. This office order further goes to show that he was to be completely responsible for the correctness of all stock of spares and even he was allowed assistance of one Shri Ganguli. Same is the position in the extract of the office order dated 22-9-74 (Ex. W/5) and office order dated 11-2-76 (Ex. W/6). It is, therefore, surprising that when he was doing the work of Asstt. Store Keeper Grade I why he was not given that grade till 1-9-1978. He was only promoted as Store Keeper Grade I on 1-9-1978.

18. The workman besides his statement on oath has also adduced documentary evidence (Ex. W/7 to W/9 and Ex. W/17 and Ex. W/18) to show that though he was incharge of Godown No. 2 and even he was addressed as senior Store Keeper Incharge of Godown No. 2 of the Area Stores, but he was not given this upgraded post of Senior Store Keeper but only kept as a Store Keeper even after 1-9-78 though others like him viz. Janardhan and S. S. Sarkar were promoted but he was discriminated against them. Ex. W/7 dated 26-11-82 goes to show that Shri A. S. Rajput, Store Keeper for the Issue Section (Spare Parts) was transferred to receipt Section. Similarly Ex. W/8 office order dated 12-9-1983 goes to show that Shri Rajput Store Keeper was asked to take work of Consumable Section from Shri M. M. Janardan and he did so vide Ex. W/9 but he continued to be designated as Store Keeper though others similarly placed like Mr. Janardan were designated as Senior Store Keeper. Though his case was referred for regularisation as far back as 1-1-75 (as is apparent from Ex. W/13 dated 5-5-81) he was not designated as Senior Store Keeper. Similarly Ex. W/15 dated 13-9-83 goes to show that the workman was Section Incharge of Stores and Issue Section of the Area Stores. In fact, in the office order dated 5-7-84 (Ex. W/17) he was addressed as Senior Store Keeper Incharge of Godown No. 2 by his Stores Officer. Ex. W/18 dated 5-10-1984 further goes to show that duties of Senior Store Keeper and Store Keeper were independent and they were incharge of the Section or which they were holding the charge.

19. On the other hand, management relied on certain documents like Ex. M/1, Ex. M/4 and Ex. M/5 which only show the actual position and not the upgraded one. Ex. M/3 is the duty list of Store Keeper and Assistant Store Keepers which does not betray the fact that the Godown were upgraded and Sectional Incharge were holding independent charge. The contention of the management on the basis of Ex. M/4 to Ex. M/6 is that there was no Store Keeper or Senior Store Keeper on the relevant dates does not advance the cause any further of the management because if they make a Store Keeper Incharge but do not designate him according to his status and the status of the Stores i.e. Regional Area that amounts to discrimination. It may be true as pointed out vide Ex. M/6 that the workman was junior to Mr. Janardan but the fact remains that the status of the Stores were upgraded from time to time and the management only picked up certain persons for upgrading and not the others. This to my mind by itself amounts to victimisation and discrimination.

20. Next I will take up material document Ex. M/2 dated 1-10-1975, photo copy of which is Ex. W/11. In the photo copy Ex. W/11 dated 1-10-1975 at page 2 it is mentioned as under :—

"Shri A. S. Rajput was working at Godown No. 1 (Spares Section) during the period from 1-1-74 to 30-11-81 as Store Keeper."

This entry goes to show that even from 1-1-74 to 30-11-81 he was working as a Store Keeper. But the management has produced the original Ex. M/2 in which corrections have been made which now reads as under :—

Shri A. S. Rajput was working a Godown No. 1 (Spares Section) during the period from 1-1-74 to 1-9-78 as ASK and 1-9-78 to 30-11-81 as SK."

In this regard management has examined Shri S. Gangadhar, Senior Store Keeper. In his cross-examination this witness has clearly admitted that he was never in the Store Section before May 1985 and whatever he has stated is on the basis of the record. Therefore if he made any correction, if Ex. M/2 it cannot be taken to be based on his personal knowledge and therefore correction, if any made by him is worthless. In any case this is the office record and if the photo copy Ex. W/11 shows differently it will be presumed that this correction was made subsequent to the photo copy.



This witness also proved certain signatures of the officers on the documents of the workman which were denied.

21. In view of the above finding of mine based on documentary evidence the statement of Shri D. S. Gill who was neither working in the Store Section nor during the relevant period is worthless. He has admitted in his cross-examination that he was only transferred in this area from 1984. His oral evidence does not in any way advance the case of the management.

22. For the reasons discussed above I hold that the workman is entitled to the salary of upgraded post as claimed by him. As such the reference is answered as under :—

That the claim of the Betul Zila Rashtriya Khadan Karamchari Sangh, Pathakhara for redesignating Shri Anoop Singh Rajput, Asstt. Store Keeper from 1-1-1975 to 31-8-1978 with consequential wage benefits etc. as per responsibilities actually shouldered by him and for further redesignation from 1-12-1981 onwards with further consequential wage benefits as per responsibility shouldered by him is justified. He is entitled to higher salary of upgraded post as claimed by him for the period mentioned above. He is further entitled to costs of litigation Rs. 100. Management is directed to pay his all due within one month from the date of publication of this award, otherwise the dues will carry interest at the rate of 12 per cent per annum from the date of this award.

V. S. YADAV, Presiding Officer  
No. L-22012(81)/82-D.III(B)

का.आ. 809. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य नियम, आदीपुर के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 809:—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India, Adipur and their workmen, which was received by the Central Government on the 29-3-1989.

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, GUJARAT, AHMEDABAD

Reference (ITC) No. 19 of 1988

#### ADJUDICATION

#### BETWEEN

Food Corporation of India, Adipur.

#### AND

The workmen employed under it.

In the matter of the demand regarding changing the date of birth of Shri Khamu Samat, Ex. Stitcher from 21-11-1933 to 29-10-1930.

#### APPEARANCES :

Shri Z. K. Saiyed—for the Corporation.

Shri D. S. Vasavada—for the workmen.

#### AWARD

The (Desk Officer, Central Government, Ministry of Labour, Government of India by an Order No. L-42012/180/87-D.II (B)/D.IV (B) dated 26-7-88 has in exercise of the powers conferred under Section 10(1), clause B, has referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad. The dispute referred is :—

red the dispute for adjudication to the Industrial Tribunal, Ahmedabad. The dispute referred is :—

"Whether the action of the management of Food Corporation of India, Adipur in changing the date of birth of Shri Khamu Samat, Ex. Stitcher from 21-11-1933 to 29-10-1930, is justified? If not, to what relief the workman is entitled?"

2. The Kandla Port and Dock Mazdoor Sangh, Kutch, the sponsoring union in this case has filed the statement of claim at Ex. 4 and it is briefly as under :—

That the Khamu Samat was working as Ex. Stitcher in the Food Corporation of India (hereinafter referred to as Corporation). He has put in approximately 20 years of service. Now as per the voluntary Retirement Scheme introduced by the Corporation the person who has left at least 5 years of service will be entitled to receive 60 months wages by way of the Scheme and the person who is left less than 5 years of service will be receiving less amount by way of retirement benefit. It is further the case of the Union that the concerned workman opted for the Retirement Scheme which was introduced by the Corporation on 26th June, 1986. It is further the case of the Union that the date of birth of the workman concerned on the record of the 1st Party is 25th November, 1933 and not 29th October, 1930. However, the Corporation without assigning any reason and without taken into consideration the real evidence on record has arbitrarily take into consideration the date of birth as 29th October, 1930. It is contended that this action of the Corporation is arbitrary and illegal and in violation of the principles of natural justice. The Union has further referred to the fact that the Corporation has given a certificate dated 22nd January 1978 stating that the year of birth of the concerned workman is recorded as 1933 for the purpose of confirming the date to the Insurance Company. The contention of the Union is that the concerned workman was entitled to receive Rs. 90,000 towards voluntary retirement benefit and this amount has been deliberately not paid by the Corporation; that the concerned workman is also entitled to receive interest thereon and in view of the Supreme Court judgement it is played inter alia that the Corporation may be directed to treat the date of birth of the workman concerned as 21st November, 1933 and not 29th October, 1930 and grant all benefits under the voluntary scheme to the said workman namely Khamu Samat, Ex. Stitcher; that the Corporation may be directed to pay interest thereon at the rate of 18% p.m. and also the cost of this reference. (A) Food Corporation of India has filed its written statement at Ex. 7 and briefly as under : "Firstly it is contended that the dispute referred is not covered under third schedule of the Industrial Disputes Act and therefore the Industrial Tribunal has no jurisdiction to entertain the reference made by the Central Government. It is further contended that the applicant joined the service as temporary Stitcher in the month of March, 1968 and was subsequently made permanent with effect from 1-11-70. It is also stated that while submitting the Bio-data form of enlistment under Kandla unregistered Dock Workers (BE) Scheme, 1968 the concerned workman has mentioned his birth year as 1923 since he has not submitted any supporting document in the said Bio-data form. He is directed to have its medical examination before Kandla Port Trust Medical Officer. The said Medical Officer declared the applicant's age as 40 years on 29-10-1970 and therefore his date of Birth was taken as 29-10-1930. It is further contended that the applicant's service from March, 1968 to 31st August, 1986 works out to be 18 years and 6 months and not 20 years. Further it is contended by the Corporation that the procedure for arriving at the date of birth in cases where there is no documentary evidence to the age of the man has been prescribed by the Government of India, Ministry of Finance, by its Order dated 23rd June, 1915 which in substance says that when there is no documentary proof as regards age, the age should be one as recorded in the medical certificate. It is also contended that the certificate issue to the concerned workman for obtaining the Insurance policy was issued as per his request, that the concerned workman cannot take advantage of his own declaration. Further it is denied that the retirement benefits of the concerned workman comes to Rs. 90,000 (A) In fact the amount of retirement benefit was sanctioned taking his birth date as 29th October, 1930. It is further stated that accordingly two cheques one for

Rs. 16,687.52 dated 14-9-86 and another for Rs. 38,383 dated 14-9-86 were drawn in favour of the concerned workman, but since he has not received the said payment said cheques were cancelled. The Corporation is always ready and it is still ready to make the payment of the aforesaid sum of Rs. 54,070.50. It is contended that the benefit under the said voluntary retirement scheme, 1986 were correctly worked out on the basis of the certificate of Kandla Port Medical Officer in the year 1970 for which the applicant had not raised any objection. During 8 1/2 years of service and hence the present reference be rejected. In the present reference on behalf of the union, the concerned workman Shri Khamu Samat was examined at Ex. 15 and the Civil Surgeon examined and issued a certificate. His examination is at Ex. 27. The Chief Labour Inspector Shri Anil Narayanlal PS examined on behalf of the Corporation at Ex. 30. No other eye-witness has been examined in this case.

3. After the evidence was led I have heard arguments of Mr. D. S. Vasavada for the union and Mr. Z. E. Saiyed for the Corporation. The question is whether the action of the management of Food Corporation of India in changing the date of birth of Khamu Samat from 21-11-33 to 29-10-30 is justified. In other words the question referred is whether the management was justified in changing the date of birth from the year 1933 to the year 1930. On this point I will refer to the evidence of Khamu Samat Ex. 15. He states that he joined the Corporation on 1st March, 1968. According to him he was made permanent on 1-11-70. He further states that in the year 1970 he has filed an application for enlisting under the Kandla Unregistered Dock Workers (RE) Scheme, 1968. It is at Ex. 18. In the said form he has given his year of birth as 1933. He has given his year of birth as 1933. He has also shown his age then as 36 years. He admits that he had not given any documentary evidence at that time, but according to him it was never called for him. He also admits that he was medically examined for the purpose of ascertaining his age. According to him he gave his age as 36 years and the Doctor had asked him to put his thumb impression. Thus he states that the Doctor never told him that his age was 40 years. It may be stated that in the certificate at Ex. 31 his age has been shown as 40 years by the medical officer. According to him he was examined on the New Year Day. There were about seventy other persons who were also called for the medical examination and the Doctor examined him at 3.30 p.m. and that this certificate was never shown to him.

4. Now the question is whether the Corporation was right in accepting the age of the concerned workman as 40 years on 29-10-1970 when the concerned workman was examined medically. The Medical Officer appears to have given information that the age of the concerned workman was about 40 years only on the basis of the appearance. There is no other scientific reason assigned by him to show that the age of the concerned workman could be 40 years on 29-10-70. In other words there was nothing to show that the concerned workman was born in 1930 when the said Medical Officer examined him.

5. Apart from it the Corporation it appears never informed the concerned workman that year of birth as shown in his application for enlisting him as per Kandla Unregistered Dock Workers (RE) Scheme at Ex. 18 was not accepted, that application was submitted by the concerned workman in August, 1970 and the medical examination as stated above has taken place on 29-10-70. Thus the medical examination was held after the concerned workman submitted his application for enlisting him.

6. In the decision namely Sarjuprasad and General Manager and Another the Lordship of the Supreme Court in 1981 II LJ p. 380, the date of birth was changed once having been accepted it by the Respondent without giving opportunity to the appellant. In that case, relying on earlier decision, the Hon'ble Supreme Court observed that the date of birth without notice and without giving opportunity to the appellant cannot be altered. An administrative order which involve civil consequence must be made in conformity with the rule of natural justice which at its lowest minimum requires notice and opportunity to the person affecting thereby. In the instant case there is nothing to show that the Corporation

has after the medical examination on which they rely in holding that the year of birth of the concerned workman was 1930 issued any notice to the concerned workman. They have not given any opportunity to explain and that having not been done, naturally the Corporation could not rely on the medical certificate. In fact the Corporation should have brought the said medical certificate to the notice of the concerned workman. He has merely put his thumb impression on the same and it is difficult to hold that the concerned workman had knowledge about the fact that the Medical Officer on the examination found his age as 40 years.

7. Further it is also necessary to note that the Corporation had on 22nd January, 1978 issued a certificate to the concerned workman for the purpose of verification of the age in the Life Insurance Corporation; that certificate is produced at Ex. 16. In fact that certificate was given by the Corporation to the Life Insurance Corporation. In this certificate also it is certified that as per the enlisting form submitted by the concerned workman Shri Khamu Samat, his age is 45 years (in the year 1978); that his year of birth is recorded as 1933. It therefore appears that age and year of birth as was recorded by the Corporation was 1933 and not 1930 and the Corporation in the record corrected the age and put his year of birth as 1930 afterwards. If it were not so, the certificate which the Corporation gave to the Life Insurance Corporation for showing the year of birth of the concerned workman would have shown 1930 and not 1933. It is true that birth date was shown by the concerned workman in the enlisting form. However, it was for the Corporation to correct the said birth date at an earlier point of time after giving due opportunity to the concerned workman.

8. The Union also examined one Narendra Kalidas Patel Civil Surgeon of Bhuj at Ex. 27. He has examined him on 3rd January, 1987. According to him he has examined the concerned workman and from his height, weight, hair and the position of teeth as well as the age of the first child he gave the certificate as regards his age as 52 vide Ex. 23. He admitted in his cross examination that in view of the aforesaid examination the age that could be ascertained is approximate one and that only upto the age of 25 years the age could be ascertained from the number of teeth and the position of bones, with an error of one or two years. Thus the evidence is of no use to the Union to show that the age of the concerned workman was 52 years in the year 1987.

9. Shri Anil Narayanlal, Chief Labour Inspector in the Corporation has stated in his evidence that when the concerned workman entered service of the Corporation he had no documentary evidence to show his year of birth and therefore he was sent to the Medical Officer Kandla Port Trust. He gave the certificate. I have already referred the said certificate which is at Ex. 31. As stated earlier this certificate was issued in the year 1970. It appears that the concerned workman had no knowledge about the age recorded therein and therefore there was no question of the concerned workman raising a dispute as regards the age recorded therein.

10. Further Anil Narayanlal at Ex. 30 states in his evidence that they had issued a medical attendance card at Ex. 11. That attendance card is dated 28-12-81 and it shows that the age of the concerned workman was shown as 46 years and it appears from the case, that the Corporation did not consider the age of the concerned workman as 51 years in fact the certificate was issued in the year 1981 and in this birth date was of the year 1933 and age should have been shown as 51 years.

11. Apart from that it is clear from what has been stated above that the age of the concerned workman as shown in the application was 26 years. Even Medical Officer in the year 1970 he gave his age as 35 years. The Corporation had issued a certificate as at Ex. 16 to the Life Insurance Corporation of India showing that he was born in the year 1933. This certificate was issued in the year 1973 and in the circumstances the Corporation should not have unilaterally altered the birth date. It is true that the concerned workman should have also been more alert before accepting the voluntary retirement scheme in as much as if he had completed 20 years of service, he was entitled to get more benefit

from the Corporation. However, it is clear that the Corporation had issued an order of relieving these persons only from 31st August, 1986, that order was issued on 31st August, 1986 vide Ex. 13 and in that Order at Ex. No. 57, the name of the concerned workman is shown and there the birth date is shown as 29-10-1930 and so far as this birth date is concerned as I have stated earlier the concerned workman had no notice and in the circumstances the concerned workman should have been given the benefit on the basis that the year of birth was 1933. In the circumstances he would be entitled to have the benefits of the voluntary retirement scheme on the basis that his birth date was in the year 1933. In the result I pass the following Order. The Food Corporation of India shall treat the birth date of the concerned workman Shri Khamu Samat as 31st November, 1933 and calculate the benefits available to him under the voluntary scheme and pay the amount thus arrived at within 2 months from the date of publication of this Award. No order as to cost.

Sd/-

G. J. DAVE, Secy.  
Ahmedabad,

Dated : 10-3-1988.

C. G. RATHOD, Presiding Officer  
[No. L-42012/180/87-D.II (B)]

नई दिल्ली, 5 अप्रैल, 1989

का.प्र. 810—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स ई.सी. लिम., की महवीर (घार) कोलियरी के प्रबन्धन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

New Delhi, the 5th April, 1989

S.O. 810.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mahabir (R) Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on the 29-3-1989.

## ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
AT CALCUTTA

Reference No. 33 of 1984

## PARTIES :

Employers in relation to the management of Mahabir  
(R) Colliery of E.C. Ltd., P.O. Raniganj, Distt.  
Burdwan

## AND

Their workmen.

## APPEARANCES :

On behalf of employers—Mrs. R. Rathore, Deputy Per-  
sonnel Manager of the Colliery.

On behalf of workmen—Workman concerned personally.

STATE : West Bengal

INDUSTRY : Coal

## AWARD

By Order No. L-19012(7)/84-DIV (B) dated 27th July, 1984, the Government of India, Ministry of Labour and Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Mahabir (R) Colliery of E.C. Ltd., P.O. Raniganj, Distt. Burdwan (WB) in not regularising Sri Manager Singh, the workman, as a Traffic-in-charge is justified ? If not, to what relief the workman is entitled ?"

2. When the case is called out today, both parties file a Memorandum of settlement duly signed by them. Both parties pray for an Award in terms of the said Memorandum of Settlement. Considered the said Memorandum of Settlement as well as the submission of parties. The terms of the Memorandum of Settlement appear to be fair, reasonable and in the interest of the parties. I therefore, accept the same and pass an 'Award' in terms of the said Memorandum of Settlement which do form part of this Award as Annexure—'A'.

This is my Award.

Dated, Calcutta,

The 20th March, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer  
[No. L-19012/7/84-D.IV (B)]

BEFORE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL, CALCUTTA

Reference No. 33/84

## FORM 'H'

(See Rule—58)

## FORM FOR MEMORANDUM OF SETTLEMENT

## Name of the Parties :

Sri G. R. Singh, Dy. Chief Personnel Manager, Kunus-  
toria Area, I.C.L. P.O. Toposi, Dist. Burdwan

## Representative of the workman :

Sri Jayanta Poddar, General Secretary, CMC (HMS)  
Bengal Hotel, Asansol.

Sri Manager Singh Workman concerned.

## SHORT RECITAL OF THE CASE

Sri Jayanta Poddar, General Secretary, CMC (HMS) raised dispute of one Sri Manager Singh, Haulage Khalasi for regularisation as Traffic Incharge. It was alleged by the Union that Sri Manager Singh, Haulage Khalasi is working as Traffic Incharge at Mahabir Colliery since long and hence he should be regularised as such. The Union raised dispute at conciliation which ended in failure and get reference at Industrial Tribunal at Calcutta where it is pending since 1984.

During the meeting with Director (Personnel) Sri Jayanta Poddar discussed above case and request the management to consider the case of Manager Singh for amicably settlement out of Court. It was agreed in the meeting that his case will be considered against the vacancy of Sand Munshi/Trip Munshi of which there is vacancy to which union agreed. The minutes have forwarded vide No. ECL/CMD/C-6-E/15/574 dated 11th May, 1988.

The case was forwarded to Director (Personnel) and the competent authority approved the regularisation of Sri Manager Singh as Pit Clerk, Grade-II with immediate effect as per letter No. ECL/CMD/C-60/IL/89/1400 dated 25-1-89. Hence the settlement is made by both parties agreeing that Sri Manager Singh will be regularised as Pit Clerk, Grade-II with immediate effect. The Union will not claim any past benefit.

## Representing the workman :

Jayanta Poddar  
General Secretary  
CMC (HMS)

Bengal Hotel, Asansol  
Distt. Burdwan (W.B.)  
Manager Singh  
Workman concerned

## Representing the Employer :

G. R. Singh  
Dy. Chief Personnel Manager  
Kunustoria Area  
P. O. Toposi, Dist. Burdwan

## WITNESS :

1. Mrs. R. Rathore  
Dy. Personnel Manager,  
Kunustoria Area.

नई दिल्ली, 6 अप्रैल, 1989

का.प्रा. 811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य निगम के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

New Delhi, the 6th April, 1989

S.O. 811.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on the 29-3-1989.

## ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT JABALPUR

Case No. CGIT/LC(R)(45)/1988

## PARTIES :

Employers in relation to the management of Food Corporation of India, Raipur and their workman Shri Birbal Bharati S/o Reghu Bharati, Sweeper Colony, Raipur.

## APPEARANCES :

For workman—Shri Birbal Bharati Workman.

For Management—Shri K. M. Rao, Assistant Manager,  
INDUSTRY : Food Corporation DISTRICT : Raipur  
(M.P.)

## AWARD

Dated, the 10th October, 1988

In exercise of the powers conferred by Clause (d) of Sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government has referred the following dispute to this Tribunal for adjudication, vide Notification No. L-42012/93/87-D.II (B), dated the 6th May, 1988 :—

"Whether the action of the management of Food Corporation of India, Kapa Raipur in terminating Shri Birbal Bharati S/o Reghu Bharati, Sweeper from service with effect from 24-4-1985 is legal/justified? If not, to what relief the workman concerned is entitled and from what date?"

On receipt of the reference order a date was fixed for filing the statement of claim on 3-6-1988 but none party filed the same. On the next date i.e. 28-7-1988 workman and the representative of the management stated that the case has been settled, and a date be given for filing the settlement. On 23-8-1988 Shri K. M. Rao on behalf of the management and the workman concerned appeared personally and filed an application that the dispute has been resolved between the parties, therefore, case be closed. It is further stated therein that the case of Birbal Bharati Sweeper regarding (1) rein-

statement (2) Payment of wages from the date of dismissal till the date of reinstatement have been solved since the said official has already been taken into service with effect from 2-5-1988 and his wages from 23-4-1985 to 1-5-1988 are being paid to him. An order to this effect has also been passed by the District Manager, Food Corporation of India, Kanpur on 20-8-1988.

In view of the above I record my award in terms of the settlement arrived at between the parties and make no order as to costs.

V. S. YADAV, Presiding Officer  
[No. L-42012(93);87 D.II(B)]

का.प्रा. 812.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड्स लि. नागपुर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-89 को प्राप्त हुआ था।

S.O. 812.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Coalfields Ltd. Nagpur and their workmen, which was received by the Central Government on the 29-3-89.

## ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT JABALPUR (M. P.).

CASE NO. CGIT/LC(R)(226)/1987

## PARTIES :

Employers in relation to the management of Western Coalfields Ltd., Nagpur and their workmen S/Shri Gulab Singh, Tyndel, N. K. Jha, Tyndel, Jaswant Singh, Loader and A. Parabat, Fitter Helper, represented through the Assistant Branch Secretary, Rashtriya Koyala Khadan Mazdoor Sangh, P. O. Sillewara, District-Nagpur (M. S.).

## APPEARANCES :

For Workmen ... Shri S. K. Rao,  
Advocate.

For Management ... Shri P. S. Nair,  
Advocate.

INDUSTRY : Coal Mines .. DISTRICT Nagpur (M.S.).

## AWARD

Dated the 3rd February, 1989

By notification No. L-21011/27/86-D. III (B)|DII(A) dated 27-10-1987 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the management of Western Coalfields Ltd., Nagpur in transferring S/Shri Gulab Singh, Tyndel, N. K. Jha, Tyndel, Jaswant Singh, Loader and A. Parabat, Fitter Helper, In July/August, 85 justified? If not, to what relief the employees concerned are entitled?"

2. Parties filed their respective statement of claim, on 11-1-1989 Shri P. S. Nair, Advocate, for management filed a Memorandum of Settlement duly signed by the representative. Union and representative of the management and they have verified the settlement before me.

3. I have gone through the terms of settlement as incorporated in the Memorandum of Settlement which are reproduced below :—

#### TERMS OF SETTLEMENT

1. Shri Gulab Singh was working as Tyndel in Pipla Mines. He was initially appointed as Category-I Mazdoor and regularised in 1975. Thereafter he was regularised as Tyndel on 1-6-78. Due to necessity of Tyndel at Patansaongi Mines, he was transferred there by order dated 14-12-1985. He reported for duty in the said mines and neither he nor any union has any complaint about the transfer which is accepted in the interest of administration.
2. Shri Arvind Parbat S/O Shri Gopalrao Parbat was regularised as Category-I Mazdoor on 1-5-1985. Due to re-organisation of Patansaongi Mines, he was transferred to Walni Mine alongwith 19 others. He also joined in the said mine. He has also no complaint about the transfer having joined the new mine on transfer.
3. Shri Jaswant Singh, P. R. Loader was transferred to Walni Mine as per administrative necessity, by order dated 9-7-86 from Kamptee Colliery. He joined Walni Mine. On a special request of the Union, the management has agreed to post him back at Kamptee Mine with effect from 16-1-1989. Shri Jaswant Singh will not be paid any wages for the period he remained absent from duty. But his service will be treated as continuous.
4. As far as Shri N. K. Jha, Tyndel is concerned, he has not approached the Union subsequent to the order of reference. Therefore, the Union is dropping the case without prejudice to the right to take up the case with the management if and when he approaches the Union.

The aforementioned terms of settlement appear to be fair, just and in the interest of the workmen concerned. I therefore record my award in terms of the settlement and make no order as to costs.

V. S. YADAV, Presiding Officer.  
[No. 21011/27/86-D. III(B)/D.II(A)]

का. आ. 813.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड्स लि., कोरबा, जिना जिलापूर के प्रबन्धक से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, जवाहरपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

S.O. 813.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Coalfields Ltd., Korba, Distt. Bilaspur (MP), and their workmen, which was received by the Central Government on the 27-3-89.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(25)/1983

#### PARTIES :

Employers in relation to the management of Western Coalfields Limited, Korba, District Bilaspur (M.P.) and their workmen MSG workers represented through the Chhatisgarh Khadan Kharkhara Mazdoor Union, Bankmongra, Distt. Bilaspur (M.P.).

944 GI/89—8.

#### APPEARANCES :

For Union—Shri Rambilash Shobhnath.

For Management—Shri P. S. Naïr, Advocate.

INDUSTRY : Coal Mining. DISTRICT : Bilaspur (M.P.).

#### AWARD

Dated, the 13th September, 1988

By Notification No. L-22011/39/82-D.III(B) Dated 1st July 1983 Government of India in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication:—

“Whether there is justification in the demand of the Union of WCL, Korba in having Cat. VI for MSG workers in Banki and Surakachhar Collieries? If not, are the workers entitled to any additional remuneration or any other relief?”

2. It is a common ground that the wage structure categories and other details of the employees employed in the coal mines are governed by the Wage Board Recommendations for Coal Industries as modified by the N.C.W.A. and the workers for the purpose were divided into Category I to VI. Mechanical mining and R & D Long Wall Face was started in Banki and Surakachhar Colliery. On the pattern of N.C.D.C. Ltd., Giddi A colliery in 1972. In this system the work in the mine was done on the pattern of ‘all man all job’. This was a new type of work for which there was no category or wage structure in the Central Coal Wage Board or N.C.W.A. I and II. In Banki and Surakachhar Collieries of Korba Area the mechanical mining and R & D Long Wall Face was started in 1978. Therefore six trained multi-skilled group workers were called from Giddi ‘A’ Collieries to train the workers in these collieries. They came and trained the workers. Ever since the work is being done on the above pattern by the said colliery workers. The Union raised a demand that these Multi-skilled workers be paid wages of Category VI as has been paid to workers of Giddi A Collieries. Therefore, a meeting was held by the various representative of the Union and the management on 7-6-1978 to decide the wage structure for M.S.G. workers. At that time the wages of these workers were fixed at Rs. 15.50. However, after the implementation of N.C.W.A. II workmen and their representative again prayed for increase in wages and finalisation of the scale of wages of M.S.G. workers.

3. On 23-11-1979 another meeting of all the representatives of the Union and the management took place at the Rest House of Banki and Surakachhar Colliery. At that time also scale of pay in the time scale of Rs. 20,22,0,72,14 with initial fixation of 20.93 as on 1-1-79 with future increments were to fall on 1-2-79 for those who have completed one year at R & D Face upto 31-8-79 and those who complete one year service between 1-9-79 to 28-2-80 the date of increment will be 1-3-1980.

4. The case of the Union is that in both these meetings their demands to pay M.S.G. workers category VI wage like that is being paid in Giddi A collieries was turned down though it is justified.

5. The case of the management is that this fixation of wage was fully and finally accepted by all the representatives and all M.S.G. workers working in the colliery took the benefit of scheme without any objection. Even Chattishgarh Khadan Karmchari Mazdoor Union which has sponsored the dispute was very much present in both the meetings and they have accepted the scheme without any reservation. Union therefore now cannot challenge the said scheme after taking the advantage of that scheme. In any case, the other five unions working have no complaint whatsoever. Sponsoring union is a minority union with hardly any members. The Wage scale given to M.S.G. workers is very high scale since they are only doing the miscellaneous work of general nature including the work of Category I to V. Therefore there can be no justification for Cat. VI wages to these workers. The matter having been settled at two independent meetings as such no dispute subsists. The dispute if any has to be settled on a national level. These disputes are already before the

Joint Bipartite Committee for coal industry. As such the reference is premature.

6. Question before me is whether the demand of the Union is justified or not? If so, whether they are entitled to any additional remuneration or any other relief.

7. The claim of the petitioners is firstly challenged by the management on the ground that there has been already full and final and valid settlement between the parties. Therefore the reference is bad in law and not maintainable.

8. In this regard learned Counsel for management has relied on the minutes of discussion of meeting dated 7-6-1978 (Ex. W/2) and 23-11-79 (Ex. M/1). From perusal of Ex. W/2 it is apparent that the scheme of 'all man all job' which was conveyed to the management was explained to the representative of the Union and the Union only agreed in principle. However, while explaining in Cl. No. 5 it has been mentioned that it was decided that all the workmen would be paid as per the scheme conveyed to the management by their Headquarters which is enclosed herewith. This clause 5 does not say that it is a settlement between the union and the management. This by no stretch of imagination can said to be a settlement under S.18 of the I.D. Act. This is also clear from the subsequent settlement dated 23-11-79 (Ex. M/1). Later part of Cl. 4 thereof says that the details shall be discussed at a later stage and the same will be finalised before diverting them to the other panel. The next Cl. 5 which is material is reproduced below —

"5. During the course of discussion Trade Unions contended that the pay scale mentioned in para 1 is not adequate and demanded Cat. VI wages. This will be discussed with General Manager, Korba in a meeting where the final settlement will be signed within a week;

Representatives of the MPCWF not agreed the decision taken by the Hd. Qrs."

The above paragraph makes it abundantly clear that during the discussion the Trade Union had contended that the pay scale awarded to it is not adequate and demanded category VI wages. Therefore it was decided that this will be discussed with the General Manager, Korba in a meeting where the final settlement will be signed within a week. These words are enough to show that it was not a final settlement, but was only a proposal and counter proposal of the parties which was not matured into a settlement. It was not a settlement because further on it has been stated that the representative of the M.P.C.W.F. did not agree to the decision taken by the Headquarters. This clause in clear words states that the representative of the M.P.C.W.F. had not agreed to the decision taken by the Headquarters. It was under discussion in these meetings. In view of this, the contention of the management that the other union did not object to this settlement and they had accepted the same is devoid of any substance. From these settlement it can also not be said that the representative of the sponsoring union of this dispute Shri Rambilash Shobhnath is bound by these notes of discussion. They were simply notes of discussions and it was not a full and final binding nature of settlement between the union and the management as is stated by management's witness M.W. 1. Shri M. B. Mathur.

9 Next learned Counsel for the management has contended that the demand of the Union for Category VI wages is not justified and proved from evidence on record.

10. In support of their claim parties have adduced evidence. Union has examined Ghuro Mian (W.W.1), S. D. Khan (W.W.2), Duji Ram (W.W.3), Nawal Singh (W.W.4) and Kul Behra (W.W.5) to prove that they are doing all type of work necessary to raising the coal and carrying away the same from the mine, yet they are only being paid wages of Category 5-1/2. On the other hand, witness of the Management, Shri M. B. Mathur, tried to show that the jobs done by the workmen are of Cat. IV and below. They are not required to do Category V and VI work. In Giddi Colliery (Bihar) work is done by French mining method which is different type of higher grade work which is not required to be done in their mine. This statement of Shri Mathur is

against their own pleading that these workmen are doing miscellaneous work of general nature including work of Category I to V (para no. 9 of written statement of management). Admittedly workers are being paid the wages of category 5-1/2. Therefore the statement of Shri Mathur does not appear to be reliable. I therefore see no reason to disbelieve the evidence adduced by the Union.

11. Regarding the type of work which has been done by the workmen has been mentioned in the notes dated 8-5-78 (Ex. W/1) and dated 7-5-78 (Ex. W/7). In the report of the Central Wage Board for Coal Mining Industry para 15 the categories of workers of Category I to VI have been defined. The fact that these workmen are doing work of 'all man all jobs' means that they are not only doing the work of skilled (senior) worker but that of highly skilled which is defined as Category VI. I, therefore, have no hesitation in holding that these workmen are doing the work of highly skilled workmen under the scheme of 'all man all jobs' specially looking to the fact that trainers from Giddi A were called to train these workmen and thereafter they had taken up the work independently.

12. Question arises whether the workmen are entitled to the wages of category VI workers. In this regard, learned representative of the Union has drawn my attention to Wage Board Report, Part I page 58, Section A, para 17 which is being reproduced below :—

"We are aware that there may be certain categories which are or may not have been covered by our recommendations. In such cases we would urge that they shall be appropriately fitted into the six categories recommended by us by mutual negotiations between the parties."

In this regard, the contention of the learned representative of the Union is that as per the above provision fitting the workers into the category of 5-1/2 is neither legal nor proper nor it is justified. They ought to have been fitted into a category and not sandwiched between two categories which is not provided for in the Wage Board Agreement. This contention appears to be sound and justified. There is yet another reason why these workmen should be fitted in a particular category. If they are not so fitted any award agreement or orders and notification issued by the National Coal Wage Board will not apply to these workers and they will be always loser and be on the mercy of the management to grant benefit of any such award etc. This will amount to unfair labour practice and victimisation of the workers. Such a practice will lead to industrial unrest.

13. The letter dated 27-10-1979 (Ex. M/3) to Dy. C.M.E. (HSD) goes to show that these workers were provided incentive which perhaps was subsequently stopped. This demand was also turned down by the Ministry of Labour vide Order dated 19th December, 1983 (Ex. W/7). This incentive was being paid because they were fixed in Category 5-1/2. Therefore also the workers are entitled to Category VI wages. I therefore hold that these M.S.G. workers are entitled to wages of Category VI.

14. On behalf of the management, it has been contended that the workers have accepted the post and wages willingly. Therefore they are estopped from challenging the same. This is to my mind is not correct looking to the minutes of meeting Ex. W/1 and Ex. E/17.

15. It has been further contended that the question of fixing of their wages is pending before J.B.C.C.I. which is an All India Committee for recommendation of wages of workers to coal industries. As such, if they are granted category VI wages it will create disparity and result in national dispute and industrial unrest. This contention is devoid of any substance. Management did not produce any document to prove that the matter is pending before the JBCCI for consideration. In fact, Union vide their application dated 3-8-84 has called for certain documents which the management did not care to produce. This raises an adverse inference against the management. Had they such document they would have produced the same.

16. Lastly it has been contended on behalf of the management that Giddi Colliery workers were already getting Cate-

gory VI wages before they were called to train these persons, therefore there is no justification to grant them the same category wages. This contention is fallacious. Once these workers are trained there is no justification to discriminate the workers. As already pointed out it will amount to discrimination, victimisation and unfair labour practice that some workers are being paid less for doing the same type of job. This is also against the principle of equal wages for equal work.

17. Learned representative of the Union has contended that these workers are entitled to remuneration of Category VI from the date they were trained. I am unable to agree. The reason is that the reference made to this Tribunal is whether there is justification in the demand of the Union of W.C.L. Korba in having Cat. VI for MSG workers in Banki and Surakachhar Collieries. Reference does not say that from what date these workers are entitled to additional remuneration or any other relief. Therefore this Tribunal will be travelling beyond the scope of reference if any particular date is fixed by this Tribunal. In the result, I answer the reference as under:—

That the demand of the Union of W.C.L. Korba in having Category VI for MSG workers in Banki and Surakachhar Collieries is justified and they are entitled to the same. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-22011/39/82-D.II(B)]

श्री आ. 811—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुगुण में, केन्द्रीय सरकार व भारतीय खाद्य निगम के प्रबन्धमन्त्र के सम्बन्ध निम्नलिखित और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

S.O. 814.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 27-3-89.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, JABALPUR, (M.P.)

Case No. CGIT/LC(R)(109)/1987

#### PARTIES :

Employers in relation to the management of Food Corporation of India, Chetak Building, Maharana Pratap Nagar, Habibganj, Bhopal and their workman, Shri Mahesh Prasad Dubey, Technical Assistant S/o Shri V. P. Dubey, R/o 1208, Napier Town, Near Home Science College, Jabalpur M.P. (Present address 103, New Adarsh Colony, Garha Road, Jabalpur M.P.).

#### APPEARANCES :

For Workman—Shri P. S. Nair, Advocate.

For Management—Shri S. K. Rao, Advocate.

INDUSTRY : Food Corporation DISTRICT : Bhopal  
(M.P.)

#### AWARD

Dated 30-1-1989

By Notification No. I-42012/85/86-D.II(B) dated 15-7-1987, the Central Government in the Ministry of Labour, in exercise of the powers conferred by clause (d)

of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the management of Food Corporation of India (M.P. in dismissing Shri Mahesh Prasad Dubey, Technical Asstt. Gr. I from service w.e.f. 3-1-85 is justified? If not, to what relief is the workman concerned entitled?"

2. It is a common ground that the workman, Shri M. P. Dubey was appointed as Assistant Grade III(D) in the Food Corporation of India in the year 1972 (hereinafter referred to as the workman and the management. On 11-8-1983 workman was served with charge-sheet and the imputation of misconduct (Ex. M/1) with the list of witnesses and documents for violating Regulations 31 and 32 of the F.C.I. (Staff Regulation) 1971. The Articles of charge were as under :—

"That Shri M. P. Dubey, Technical Asstt. Grade I while working in Jabalpur Division has been constantly indulging himself in the act of utter misbehaviour and misconduct with his superior officers thus creating tension and unhealthy atmosphere causing hinderance to normal and smooth working. He is in the habit of shouting/insulting and humiliating his officers without any cause only with a view to suit his own taste.

On 27-4-83 he badly abused Shri K. P. Tripathi Asstt. Manager (Comm.) within the premises of Distt. Office and misbehaved with him while the former was returning to District Office after taking his lunch. Shri M. P. Dubey used foul and filthy language against Shri K. P. Tripathi and insulted him in presence of other employees thereby acting in the manner unbecoming of FCI employee.

Again on the afternoon of 2-5-83, he went to Accounts Section of District Office, Jabalpur and misbehaved with Shri T. H. Ansari, Asstt. Manager (A/cs) in presence of other members of staff on the ground of non-payment of contingency advance arising out of non-compliance of the formalities. Here too Shri M. P. Dubey, T.A. I shouted at Shri Ansari without any justification by making unwarranted and baseless allegations against him, thereby causing obstruction and creating disturbance to office work. He also insulted, humiliated and threatened Shri T. H. Ansari of dire consequences.

Thus said Shri M. P. Dubey, T.A.I has violated the official decorum and discipline and has contravened regulation 31 and 32 of FCI Staff Regulation 1971 and made himself liable for disciplinary action."

The management was not satisfied with the reply given by the workman of show cause notice. One Shri K. Ugan-dhariah was appointed Enquiry Officer and one Shri P. N. Nair was appointed Presenting Officer. The workman denied the charge and nominated one Shri A. S. Siddiqui, Assistant Manager (D) working in the District Office, F.C.I. Nagpur as his defence assistant vide his request dated 25-11-1983 (Ex. M/4) vide his letter dated 15-3-1984 to furnish him with certain documents including copy of complaints of the two complainants. Workman also objected to the appointment of the Enquiry Officer, he being a friend of one of the complainants and took up the matter to the disciplinary authority, but his request was turned down by the Disciplinary Authority vide his order dated 16-12-1983 (Ex. M/10). During enquiry two adjournments were given on the request of the Management's Presenting Officer and the workman and because of the defence assistant. Ultimately the management's nine witnesses were examined on 27-7-1984 in presence of the workman and in the absence of his defence assistant subject to the objection of the workman that he will not be able to cross-examine the management's witnesses without the assistance of his defence assistant. Next date fixed was 28-4-1984 on which date management closed its evidence. The workman was thereafter asked to produce and examine his witnesses but



the workman did not examine any witness on the ground that he cannot go ahead with the enquiry in the absence of his defence assistant. Therefore the enquiry was closed. The Enquiry Officer submitted his enquiry report on 25-8-1984 finding all the charges proved on the basis of which Senior Regional Manager, Shri K. S. Bhasin passed the order dated 3-1-1985 imposing the penalty of dismissal of service of the workman. The workman challenged his dismissal in the Hon'ble High Court which was rejected by Hon'ble High Court on 31-7-85 (M.P. No. 188/85) on the ground that he should first exhaust his departmental remedies. The workman, therefore, preferred an appeal and which was ultimately rejected by the management on 24-1-1986. Thereafter the workman moved in conciliation and on failure report this reference has been made to this Tribunal by the Ministry of Labour.

3. In the course of proceeding in this Tribunal management filed an application for amendment to the effect that if for any reason Tribunal finds the enquiry vitiated the management be given an opportunity to prove misconduct before this Tribunal. This Tribunal rejected the prayer vide its order dated 8-1-1988. The management filed a writ petition M.P. No. 353/88 challenging the order which was ultimately rejected by the Hon'ble High Court vide order dated 20-4-89 on the ground that the writ petition against an interlocutory order is not maintainable. He shall be at liberty to question the same in the ultimate decision. In the meantime, workman and the Enquiry Officer has given their statement on oath and they were cross-examined on their affidavits before this Tribunal.

4. The workman has challenged the domestic enquiry inter alia on the following main grounds :—

1. That the workman was not given a reasonable opportunity to be represented by the defence Counsel of his choice, Shri Siddiqui.
2. The workman was not furnished with the material documents to effectively cross-examine the management of mind but are based on presumption and assumption without any evidence, and as such justice.
3. That the finding of Enquiry Officer and the disciplinary Authority are not based on evidence and application of mind but are based on presumption and assumption without any evidence, and as such are perverse.
4. The charge-sheet is vague for want of necessary details.
5. In any case the punishment is too harsh.

5. On the other hand, management's case is that from the very beginning applicant workman's behaviour was to delay and obstruct the enquiry proceedings in order to gain back wages for doing nothing. During the enquiry proceedings applicant abused the officer and created panic. He was afforded all the documents called for by him, but he refused to cross-examine the witnesses and started writing his comments on the order-sheet. The management has therefore lost confidence in him. The workman deliberately tried to protract the enquiry proceedings by not obtaining the prior consent of his defence assistance. The workman at the initial stage had not raised any objection regarding the appointment of Enquiry Officer but subsequently not only challenged his appointment but misbehaved with the Enquiry Officer and made personal allegations against him. Though the applicant was well versed in English being a Science Graduate he insisted the proceedings to be written in Hindi which shows his character and conduct. Even though he was an office bearer of the Union he cannot claim immunity from any rules. The workman failed to avail all departmental remedies by way of review. The Enquiry was most legal and proper and the workman was afforded all reasonable opportunity to cross-examine the management's witnesses, but he himself failed to avail opportunity. However, if for any reason this Tribunal holds the enquiry to be vitiated the management be afforded opportunity to prove misconduct

before this Tribunal (This point was raised by way of amendment application which was rejected).

6. I framed the following issues which with my reasons and findings on all the issues are as under :—

#### ISSUES

1. Whether the domestic/departmental enquiry is proper and legal?
2. Whether the punishment awarded is proper and legal?
3. Whether the management is entitled to lead evidence before this Tribunal?
4. Whether the termination/action taken against the workman is justified on the facts of the case?
5. Relief and costs?

#### FINDINGS:

Issue No. 1 :

7. Admittedly the workman had requested the Enquiry Officer to afford him the services of Shri Siddiqui as his defence assistant. The Enquiry Officer wrote to his Controlling Authority at Nagpur to spare his services. It is also not disputed that the services of Shri Siddiqui were not made available to the workman. Therefore he got his objection noted in the statement of all the nine witnesses of the management (PW1 to PW9) that without legal assistance (DA) he could not be able to cross-examine the witnesses. The question arises whether this act of the Enquiry Officer and the management is justified or is malafide. In support of their case the workman and the Enquiry Officer, Shri K. Ugandnariah have given their affidavits on the basis of which they were cross-examined. In para no. 4 of the Affidavit the Enquiry Officer has admitted that Shri Siddiqui had sent his consent to represent the workman on 20-1-84. Therefore the management's plea that services of Shri Siddiqui could not be made available to him because the workman had not obtained his consent and the proceedings were being delayed is not quite correct. According to the Enquiry Officer, Shri Ugandnariah, at the instance of the Presenting Officer the enquiry was adjourned to 30-1-84. Thereafter it was adjourned to 6-2-84. In the meantime he had received a telegram from the D.M. F.C.I. Nagpur expressing his inability to spare the said Shri Siddiqui. In the meantime on 15-3-84 the workman had moved an application asking for certain documents and time was granted to the management to trace out the document. So the enquiry was adjourned upto 18th and 19th June, 1984. But a telegram was received from Mr. Siddiqui that he will be observing Ramzan fast, therefore he will be unable to attend. The case was therefore ultimately fixed for 27th and 28th July, 1984. But he received a telegram from D.M. Nagpur on 17-7-84 that Shri Siddiqui had been transferred to Wardha and had availed joining time. Therefore he should request Shri Siddiqui to be present on the date fixed. But the D.M. replied back by telegram that Shri Siddiqui is not available in the Headquarters. The workman instead of bringing Mr. Siddiqui or filing his consent letter sought an adjournment that he will be allowed to be represented by his Advocate, Shri P. S. Nair. Since the rule did not permit engagement of a lawyer, therefore, on 25-7-84 he had issued a formal letter addressed to the workman intimating that his defence assistance Shri Siddiqui had sent a telegram that he is transferred to Wardha and will not be able to attend on 27th and 28th July, 1984. It was in these circumstances that the enquiry was taken up in the absence of defence Assistant on 27th/28th July, 1984. Unfortunately none of the telegram except the one dated 1st August, 1984 intimating that Shri Siddiqui is on leave and not available at the Headquarters by Nagpur office and another telegram on behalf of the Enquiry Officer asking to request Shri Siddiqui to attend since the enquiry cannot be postponed, no other telegrams are produced before this Tribunal.



8. On the other hand, workman Shri M. P. Dubey has by his affidavit stated that on telephone Shri Siddiqui had told him that he received no intimation from the management or the disciplinary authority (He cited the order dated 25-7-84 Ex. W/4 which was passed behind his back). In his affidavit he has also stated that documents requested vide his application dated 15-3-84 (Ex. W/7) were never furnished to him either by the management or the Enquiry Officer. On perusal of the proceedings I find that the management in their written statement of defence dated 21-9-87 at page 6 para 7(c) had pleaded that telegram was received from D.M. F.C.I. Nagpur. It was not the case of the management or the Enquiry Officer that Shri Siddiqui had received the intimation of the date of hearing either through him or through the District Manager Nagpur. Yet in this para the management asserted that telegram will go to show that after the date of enquiry was indicated to the Nagpur office they had informed the Enquiry Officer that the date of enquiry could not be communicated to Shri Siddiqui as he is not available. This telegram clearly goes to show that Shri Siddiqui was not aware of the date of enquiry. In his cross-examination Shri Ugandhariah had to admit when he was shown order dated 25-7-84 (Ex. W/4) that he had received telegram from Mr. Siddiqui. But he asserts that he had sent a counter telegram that he must attend and enquiry will not be adjourned. But no such telegraph has been produced. At least one thing is clear that in spite of Mr. Siddiqui's request telegraphically the reasonable opportunity was not given for him to attend and conduct the enquiry. The aversion of the management on this point is also changing from time to time which clearly goes to show the bias of the Enquiry Officer.

9. Coming to the question of furnishing the copies of documents requested for by the workman vide his application dated 15-3-84 (Ex. W/7) though the Enquiry Officer had ascertained that the same were furnished to the workman, but there is no positive reliable evidence in this regard. On behalf of the management it has been contended that Ex. M/2 receipt dated 16-11-83, order sheet dated 15-3-84 (Ex. M/17) and letter of the District Manager dated 14-5-84 (Ex. M/18) go to show that the same were furnished. I am unable to agree. Ex. M/2 is a receipt by the Presenting Officer and the other two order sheets also do not disclose that these material documents i.e. statement of the witnesses of the management who were examined during enquiry were furnished before hand to the workman to enable him to effectively cross-examine the management's witnesses. I therefore find that two valuable rights of the delinquent official i.e. allowing him a reasonable opportunity to get himself defended by a defence assistance of his choice and furnishing him with the copies of documents before hand so that he may prepare his defence and effectively cross-examine the management's witnesses have been denied to him. This is contrary to well established principle of natural justice.

10. In this regard the contention of the workman is that the charge and the statement of imputation go to show that he was constantly indulging in utter misbehaviour and misconduct with his superiors and thus creating hinderance, tension and unhealthy atmosphere causing to normal and smooth working difficult. It further goes to say that he was in the habit of shouting/insulting and humiliating his officer without any cause. But for the solitary incident dated 27-4-83 and 2-5-83 no other details of habitual misbehaviour or misconduct were given. In any case there was no evidence in proof of such habitual misconduct yet the Enquiry Officer held all the charges proved to the hilt. I am of the opinion that the contention is well founded. Not only the charges to my mind were vague but the finding of the Enquiry Officer are also vague and not based on evidence on record. I, therefore, hold that the domestic enquiry was neither legal nor proper and stands vitiated on these two legal grounds alone, as has been held in the case of Sur enamel and Stamping Works Ltd. Vs. Their workman (1963—II-LLJ p. 367 as under :—

"It is now settled by various decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with

the rules of natural justice and the conclusions reached at the enquiry are not perverse, the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. But the said decisions do not mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by the employer from challenge. An enquiry cannot be said to have been properly held unless—

- (i) the employee proceeded against has been informed clearly of the charges levelled against him,
- (ii) the witnesses are examined—ordinarily in the presence of the employee—in respect of the charges,
- (iii) the employee is given a fair opportunity to cross-examine witnesses,
- (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and
- (v) the enquiry officer records his findings with reasons for the same in his report.

Where the enquiring officer based his conclusions against the concerned workman on the report given by other employees behind the back of the concerned workman without giving copies of such report to him and without making them available for cross-examination at the enquiry, the enquiry must be held unfair."

11. Issue Nos. 2 to 5:—It will be convenient to take up these issues together. I will first examine the evidence adduced during the enquiry to see whether findings are based on legal evidence. The main complaint in this case was of Shri K. P. Tripathi, Assistant Manager (Commercial) but his statement instead of being recorded was got proved by Shri A. K. Awasthi (P.W. 9). Obviously the delinquent was not offered an opportunity to test his earlier statement by cross-examining him. The reason stated is that by that time he had retired so his statement could not be recorded. But this is not just and proper ground for denying him an opportunity. In such circumstances duty of the Enquiry Officer was to exclude his statement from consideration. But it is unfortunate that the Enquiry Officer based his findings on his previous statement without any other direct evidence on the point. On perusal of evidence I find that except for the second complainant Shri T. H. Ansari none of the other witnesses like Shri V. N. K. Murthy, Asstt. Manager (PW-2), S. C. Bhatia (PW-3), Shri S. P. Khare (W-4), Shri T. D. Kori (PW-5), Shri K. Mohan Rao (PW-6), Shri N. S. Patel (PW-7), S. P. Tamarkar (PW-8), and Shri A. K. Awasthi (PW-9) have directly deposed that the workman had abused or misbehaved either with Shri Ansari or Shri Tripathi. Shri Murthy (PW-2) instead stated that such occurrence were regular and usual in his department therefore he did not pay any attention to it. Shri Bhatia (PW-3) stated that the workman, Shri Dubey, usually talked in loud voice being representative of the Union. Shri Khare (PW-4) only states about some discussion between Shri Ansari and the workman. Shri Kori (PW-5) stated that Shri Ansari and the workman do not agree with each other and he does know why. Shri Rao (PW-6) and Shri Patel (PW-7) specifically denied that the workman used any unparliamentary words in their presence. Shri Tamarkar (PW-7) stated that he had no knowledge about the incidence since he was away from the office during lunch period. Even Shri Ansari (W-1) in his statement did not disclose in his own words about incident. He simply stated that he had given all the details in his letter therefore he has nothing further to add. Thus it appears to be a case without any evidence. As such the finding of the Enquiry Officer are based on no legal evidence and therefore his findings of the Enquiry Officer are based on no legal evidence and the findings of the Disciplinary Authority are perverse.

12. In the case of *Rajinder Kumar Kindra Vs. Delhi Administration* (AIR 1984 SC 1805) it has been held that "the findings are perverse does not constitute reappraisal of evidence, though the Court would have been perfectly justified in exercise of powers conferred by Sec. 11A to do so." In the case of *R. K. Nair Vs. G. M., Bhilai Steel Plant* (MPLJ 1977 p. 497) it has been laid down that "When the enquiry is not defective and when a competent authority has passed an order of punishment the Labour Court can see whether the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry although it has no justification to sit in judgment over the decision of the management as an appellate body." In the instant case I find that the finding of misconduct is not a plausible conclusion from the evidence adduced at the said enquiry. Therefore also it cannot be said that the misconduct is proved on the basis of charges levelled against the workman.

13. All the above circumstances taken together go to show that the request of the workman to change the Enquiry Officer was based on his reasonable and just doubt and the act of the Disciplinary Authority refusing to change him had occasioned in the failure of justice. Simply because the workman was in the habit of speaking in the loud tone that does not call for such a severe punishment as has been laid down in the case of *Ved Prakash Gupta Vs. M/s Delton Cable India (P) Ltd.* (AIR 1984 SC 914), *Khaddah and C. Vs. Its workmen* (1963-II-LLJ p. 452) as has been awarded to him specially when he was admittedly a union worker. In the circumstances the plea of the management that they have lost faith on him because of the incidents for which charge-sheet dated 11-8-83 was issued and enquiry held and since few other departmental enquiries are still pending against him appears to be just a device to punish him for his union activities.

14. In the case of *Sawai Singh Vs. State of Rajasthan* (AIR 1986 SC p. 995) it has been held that omission to raise objection by the delinquent as to vagueness of charges department is not exonerated from establishing the charge. The order of termination based on such charges is not sustainable.

15. In the case of *Anil Kumar Versus Presiding Officer and others* (AIR 1985 SC 1121) it has been held that "where an disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence." In the instant case as I have already pointed out charges are vague and the findings of the Enquiry Officer are not a reasoned one at all.

16. For the reasons discussed above, I hold that dismissal/termination of the workman is not justified on the evidence and facts of the case. Punishment awarded is also not legal and proper.

17. Only question remains to be considered is whether the management is entitled to lead evidence before this Tribunal to prove misconduct. I am of the opinion that the management is not entitled to do so, firstly as I have already said so vide order dated 8-1-1988 of this Tribunal. My order dated 8-1-1988 finds support from the case of *workmen of Firestone and Rubber Co. Vs. M/s. Firestone and Rubber Company* (AIR 1973 SC p. 1227). The same view was expressed in the case of *Shambhunath Goel Vs. Bank of Baroda* (AIR 1984 SC 289) wherein it has been held—

"But when the question arises in a reference under Section 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support

of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do so at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do."

In the instant case, the management has not chosen to make the prayer that in case the enquiry is held to be vitiated for any reason whatsoever they be afforded an opportunity to lead evidence before this Tribunal at the appropriate stage. It was only after the pleading at the stage of arguments that such a request was made by way of amendment application dated 8-1-1988. Such an amendment which took away the right of the workman which had accrued to him cannot be allowed, hence the application was rejected. In any case the stage at which the plea was sought to be made by way of amendment which was very much belated and therefore could not be entertained. I am therefore of the opinion that the management is not entitled to lead evidence before this Tribunal in order to prove misconduct. The prayer to my mind was therefore rightly disallowed.

18. Consequently I hold and decide the issue accordingly. Since the action of the management in dismissing the workman is found to be unjustified on facts of the case, the workman is entitled to be reinstated with full back wages and all consequential reliefs. I answer the reference as under :—

That the action of the management of Food Corporation of India (MP) in dismissing Shri Mhesh Prasad Dubey is not justified. He is entitled to be reinstated with effect from the date of dismissal from service i.e. 3-1-1985 with continuity of service and all consequential relief and back wages. He is also entitled to Rs. 300 as costs of litigation. Management is directed to implement this award within one month from the date of publication of this award.

V. S. YADAV, Presiding Officer

[No. L-42012/85/86-D.11(B)]

R. K. GUPTA, Desk Officer

नई दिल्ली, 4 अप्रैल, 1989

क्र.अ. 815—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अन्वय में केन्द्रीय सरकार, मैसूर भारत कोयला कॉल लिमिटेड की खरादरी कोलियरी के प्रबंधन में सर्वज्ञ नियोजकों और उनके कर्मचारियों के बीच अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद (म. 8) के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-1989 को प्राप्त हुआ था।

New Delhi, the 4th April, 1989

S.O. 815.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Kharkhar Colliery, M/s. Bharat Colliery Coal Ltd. and their workmen, which was received by the Central Government on 23-3-1989.

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 68 of 1987

In the matter of an industrial dispute under Section 10(1)(d)  
of the I. D. Act, 1947

## PARTIES :

Employers in relation to the management of Kharkharee  
Colliery of Messrs. Bharat Coking Coal Limited and  
their workmen.

## APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secre-  
tary, Bihar Colliery Kamgar Union.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 16th March, 1989

## AWARD

The Government of India, Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 had referred the following dispute to the Central Government Industrial Tribunal No. 3, Dhanbad vide their Order No. L-20012(390)/82-D.III(A) dated 30th July, 1983. But subsequently the said reference was transferred to this Tribunal vide Ministry's Order No. L-20025(11)/87-D.III(A), dated the 22nd January, 1987.

## SCHEDULE

"Whether the demand of the wagon loaders, listed in the Annexure below, of Kharkharee Colliery of M/s. Bharat Coking Coal Limited, for regularisation is justified? If so, to what relief are these workmen entitled?"

Sl. No. Name

1. Girmania Kamin
2. Munesari Kamin
3. Nanbu Bhuia
4. Birhaspat Bhuia
5. Sabitri Kamin No. 2
6. Shebalal Pashwan
7. Kusurwa Kamin
8. Murti Kamin No. 1
9. Sakunwani Kamin
10. Fulwa Kamin No. 3
11. Sunrwa Kamin
12. Sudmian Kamin
13. Rajkumari Kamin
14. Lachharinia Kamin No. 3
15. Besari Kamin
16. Nagia Kamin No. 2
17. Rajia Kamin No. 2
18. Rajia Kamin No. 1
19. Sansati Kamin
20. Fulhasia Kamin No. 2
21. Bhanti Kamin
22. Dhanmatia Kamin No. 1
23. Fulmani Kamin
24. Jhulan Sharma
25. Kunti Kamin No. 1
26. Kamla Gorai
27. Kabutri Kamin No. 1
28. Mangal Bhuia

29. Mirli Kamin
30. Panwan Kamin No. 3
31. Ojhawa Bhuia
32. Dhanmatia Kamin No. 2
33. Padomani Kamin
34. Parpati Kamin No. 1
35. Sugia Kamin No. 1
36. Saro Kamin No. 1
37. Sonamati Kamin
38. Sunfulwa Kamin
39. Tulsi Bhuia
40. Kaili Kamin
41. Dasrath Bhuian
42. Amla Kamin
43. Ganesh Bhuian
44. Kari Kamin No. 4
45. Akaswa Kamin
46. Preman Bhuia
47. Lachhmi Nian Kamin No. 2
48. Shoukhi Bhuian No. 2
49. Jagia Kamin
50. Jasoda Kamin No. 3
51. Janaka Kamin
52. Gobardhan Bhuian
53. Surajmani Kamin
54. Mankwa Kamin No. 2
55. Muhadeo Gayali
56. Bidesan Bhuian
57. Mangri Kamin No. 1
58. Balo Bhuian
59. Bhantha Bhuia
60. Bhdhi Kamin No. 2
61. Kesari Kamin No. 2
62. Bipati Kamin
63. Paawa Kamin No. 1
64. Jasoda Kamin No. 2
65. Kati Kamin No. 3
66. Manakwa Kamin No. 2
67. Rukawa Kamin.

The case of the workmen is that the concerned 67 workmen are working as Wagon Loaders in Kharkharee Colliery of M/s. B.C.C.L. since long. They were originally appointed by the erstwhile owner prior to the take over of the colliery but the present management of M/s. BCCL shown the date of their appointment as 17-10-71 which was the date of take over. Kharkharee Colliery was taken over along with other coking coal mines with effect from 17-10-71 and subsequently nationalised with effect from 1-5-72. The concerned workmen became permanent employees of M/s. BCCL with effect from 1-5-72. Their service condition is guided as per provision of the Model Standing Order for Coal Mining Industry. The job of loading of coal in a colliery is of permanent nature and forms integral part of mining operation. As per provision of the Standing Orders all the concerned workmen became permanent workmen after rendering continuous service for 6 months. The management by its own policy decision decided that an employee become permanent after putting 240 days attendance in a calendar year. All the concerned workmen have put in more than 240 days attendance in a calendar year but even then the management did not regularise them as permanent workmen. Thereafter the concerned workmen represented before the management several times for regularising them as permanent workmen but the management refused the demand of the workmen without assigning any reason. Thereafter the union of the workmen raised an industrial dispute before the ALC(C) Dhanbad in which the union demanded regularisation of the concerned workmen as per provision of the Standing Orders and as per management's own policy decision. The union also submitted that as per management's own policy decision a large number of workmen have been regularised after they have put in 240 days of attendance in a calendar year. The conciliation proceeding before the ALC(C) ended in failure and thereafter

the present reference has been made to this Tribunal for adjudication by the Government of India. All the concerned workmen are members of Bihar Colliery Kamgar Union which sponsored the industrial dispute. The local management is biased and prejudiced against the members of the Bihar Colliery Kamgar Union. The action of the management in not regularising the concerned workmen with effect from 1-5-72 was illegal arbitrary, unjustified discriminatory and against the principles of natural justice. On the above facts it is prayed that the concerned workmen be regularised with effect from 1-5-72.

The case of the management is that all the concerned workmen were casual wagon loaders of the colliery. Out of 67 concerned workmen 10 have already been made permanent in the year 1982, 1983 after they completed 240 days of attendance in calendar year as per norms of the management. The other concerned workmen are still working as casual wagon loaders of the colliery. During the period of private management in most of the collieries casual wagon loaders were employed through contractors for loading wagon on the days when more wagons than the normal used to be placed on the railway sidings. Such casual workers were engaged at the mercy of the contractors and they were given jobs as and when required. During those days the supply of wagons was very erratic in as much as on some days the supply of wagons used to be nil whereas on other days a large number of wagons were placed in the sidings of the colliery. After nationalisation of all coal mine with effect from 1-5-72, several collieries were amalgamated together and bigger collieries were formed. The placement of wagons at different sidings was regulated and to some extent it became possible to give regular employment to casual wagon loaders. The management of different collieries maintained a list of permanent wagon loaders and another list of casual wagon loaders. The casual wagon loaders were employed on the days when more wagons were supplied at the sidings. In course of time regular supply of wagons improved and thereafter it was possible to employ more wagon loaders on permanent basis. The management in consultation with major trade union functioning in the coal industry took a policy decision to regularise such of the casual wagon loader who have put in 240 days of attendance in a calendar year. The sponsoring union of the present reference was a party to the consultation and the said decision. The sponsoring union should not have raised the present dispute knowing fully well that the management was making the casual wagon loader permanent when they complete 240 days of attendance in a calendar year. As stated above 10 concerned workmen named at Sl. Nos. 3, 6, 19, 20, 24, 35, 36, 38, 39 and 50 of the schedule of reference have already been regularised as permanent wagon loaders in accordance with the above policy and the rest of the concerned workmen have to wait till such time they qualify for being regularised as permanent workmen having completed attendance of 240 days in a year. On the above facts it is submitted on behalf of the management that the concerned workmen are not entitled to any relief.

The point for decision is whether the demand of the concerned workmen for their regularisation is justified.

The workmen and the management have each examined one witness in support of their respective case. The documents of the management are marked Ext. M-1 to M-22. No document has been exhibited on behalf of the workmen.

It is the admitted case of the parties that all the 67 concerned workmen were casual wagon loaders of Kharkharee colliery of M/s. BCCL. MW-1 who is working in Kharkharee Colliery as P.O.'s Clerk has stated that during the time of the erstwhile management the wagons used to be loaded by permanent wagon loaders and also contractors wagon loaders whenever more wagons used to be supplied. He has stated that the contractors wagon loaders were casual workers of the contractors and the contractors were not having any permanent wagon loader. He goes on further to state that after the abolition of the contract labour on the wagon loading job in 1972 all the contractors labourers were taken as casual wagon loaders by the management of BCCL. He has stated that after abo-

lition of the contract system the management used to employ casual wagon loaders to load the excess number of wagons supplied. He has very clearly stated that all the 67 concerned workmen were the casual wagon loaders and they were all paid bonus. He has further stated that in 1977 it was decided by the management that those casual wagon loaders who had completed more than 240 days of attendance in a calendar year from 1974 will be made permanent wagon loaders. He has stated that since that time all those casual wagon loaders who completed 240 days of attendance in a calendar year were made permanent wagon loaders. He has also proved bonus Register Ext. M-1 to M-13. These bonus registers have been filed to show the actual attendance of the concerned workmen for which bonus was paid to them in the different quarters of the year. He has stated that the names of all the concerned workmen find mention in the bonus registers since the year 1974. On perusal of Ext. M-1 to M-13 it appears that the names of all the 67 concerned workmen are contained in the bonus registers since the year 1974. It is clear therefore that all the concerned workmen are working as casual wagon loaders of the management atleast since the year 1974. The management has compiled two lists of attendance of the concerned workmen in Ext. M-14 and M-15 on the basis of the Attendance shown in the bonus registers for the year 1974 to 1983. MW-1 has further prepared a list of the present position of the concerned workmen on the direction of the Sr. P.O. and the same is marked Ext. M-16. On perusal of Ext. M-16 and also as per evidence of MW-1 it will appear that out of the 67 concerned workmen 10 have been made permanent and are working in Kharkharee Colliery and 11 concerned workmen have been made permanent and transferred to Moonidih Washery and 1 in Dharmaband colliery. M-16 further shows that out of the 10 concerned workmen 5 died, 3 resigned under voluntary retirement scheme and 2 left the services. The names and Sl. No. of workmen stated in the annexure to the schedule of reference are mentioned in Ext. M-16. Thus the overall picture which has emerged from the evidence of MW-1 and M-16 is that out of the 67 concerned workmen and 36 concerned workmen are working as casual wagon loaders in Kharkharee Colliery and 10 have been made permanent and are working in Kharkharee Colliery, 10 have been made permanent and transferred to other units such as Moonidih Washery and Dharmaband colliery and 10 have either died, resigned or left their service. For the purpose of clarity I would like to give the Sl. No. of the concerned workmen who according to the management vide Ext. M-16 have been regularised and made permanent. Sl. No. of the concerned workmen in the annexure to the schedule of reference are Sl. No. 1, 50, 8, 2, 34, 17, 11, 36, 38, 39 posted in Kharkharee Colliery, Sl. No. 46, 52, 55, 56, 59, 41, 3, 4, 6, 43, made permanent and transferred to Moonidih Washery and Sl. No. 24 made permanent and transferred to Dharmaband colliery. Serial No. 31, 28, 44, 14, 22, 35, 12, 58, 54 and 20 have either died or resigned or left the service. There is no denial of any type by the workmen regarding the concerned workmen who have been made permanent and those who have died or left the work as stated in Ext. M-16 and as such I think the management has given the correct picture of the workmen who have been made permanent and those who are died or left their services. If however any of the workmen shown to have been regularised and made permanent in Ext. M-16 have not in fact been regularised and made permanent, the management is directed to regularise and make them permanent.

The case of the workmen is that since the time of take over they are working as casual wagon loaders and have completed attendance of 240 days in a calendar year and as such they should be regularised as per norms of the management. According to the management all those concerned workmen who have completed attendance of 240 days in a calendar year have been made permanent and as soon as the rest of them complete attendance of 240 days in a calendar year they will also be made permanent. Ext. M-17 is a letter dated 13-9-83. It shows that there was a discussion by the management with the Vice-President of Bihar Colliery Kamgar Union at Karmik Bhawan and during the discussion it was agreed that the wagon loaders who had put in 240 days attendance during the calendar year 1981, and 1982 shall be regularised and posted at Akashkinari colliery. After the said decision between the management and the union the management did make permanent some of the casual wagon loaders but many of them are still casual wagon loaders although they are doing the said job for over 15 years.

The question now remains whether the other concerned workmen who are still working as casual wagon loaders have completed attendance of 240 days in a calendar year. Ext. M-14 is the Attendance chart of the concerned workmen for the year 1974, 1975 and 1976 and Ext. M-15 is their attendance chart from the years 1977 to 1983. Admittedly these attendance charts have been extracted from the bonus registers Ext. M-1 to M-13. The management did not produce the Attendance Register of these concerned workmen on the plea that the Attendance Registers are not required to be preserved for more than a year and as such their attendance registers were not available. The management has tried to escape with the problem in a very easy manner. The workmen had filed a petition dated 6-6-84 praying for calling for attendance registers of the concerned workmen for the year 1973 onwards but the management did not produce them. As the attendance register was being called for in June, 1984. The attendance registers of 1983 atleast must have been with the management but even the said register was not produce. Even after 1984 the case continued and the management could have filed the registers of 1984 till 1988 to show the attendance of the casual wagon loaders who have not been made permanent as yet. The entire dispute is based on the attendance achieved by the concerned workmen and the attendance Registers were being maintained by the management and as such it was imperative on the part of the management to produce the attendance registers for perusal of the Tribunal from the year 1983 to 1988 to see if the casual wagon loader have achieved the attendance of 240 days in a calendar year so that they may be regularised and made permanent. The entire thing has been kept in the hands of the management disabling the Tribunal from considering whether the casual wagon loaders have attained the attendance of 240 days in a calendar year after the year 1983. The management in a way explained the non-production of the attendance registers prior to the year 1982 but there was no reason for them to withhold the attendance registers of the subsequent period when the management knew fully well that the decision of the entire dispute depended on the days of attendance achieved by the concerned workmen, in the following years. In this connection it is submitted on behalf of the workmen that the Bonus Registers show the attendance of the workmen only in respect of their actual attendance and not in respect of Sundays and the holidays and if those Sundays and holidays are included been according to the chart of attendance produced by the management, the concerned workmen have achieved the attendance of 240 days or more in a calendar year. On perusal of Ext. M-1 to M-13 it is apparent that the days of attendance of workmen shown is the actual attendance and does not include Sundays and holidays. The fact that the management is not producing the attendance register but have conveniently produced the bonus Registers show that the management was suppressing the attendance registers from this Tribunal so that the real attendance achieved by the casual wagon loaders may not be shown. The learned representative for the union Shri D. Mukherjee has referred to a decision reported in AIR, 1986 Supreme Court 584=1986 Lab. I.C. 551 (Suresh Singh-Vrs- Engineer-in-Chief, CPWD) submitting that the casual wagon loaders have not been made permanent although so working for several years and that their services should be regularised. The said decision is mainly on the point of "Equal pay for equal work" doctrine and is not directly on the point of the present case. It appears from the facts of the said case that the petitioners workmen were employed by the CPWD on daily wage basis and had been so working for several years. They demanded that they should be paid the same wages as permanent employees employed to do identical work. They also demanded to employ them on regular and permanent basis. It was observed by their Lordship that "We also record our regret that many employees are kept in service on temporary daily wage basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than 6 months". I have quoted the above observation of their Lordship only to emphasise that the casual wagon loaders concerned in this case are working since over 15 years, may be over 20 years but even then they are languishing as casual wagon loaders and are deprived of the facilities of a permanent wagon loaders as is complained in the evidence of WW-1. It is really pit that even when the casual wagon loaders have worked for such long period they have not been regularised. As has been discussed earlier I am incline to hold that the concerned workmen who are still

casual wagon loaders have achieved the attendance of 240 days in a calendar year and as such even according to the norms and rules of the management they now deserved to be regularised as permanent wagon loaders.

In the W.S. the workmen have demanded regularised of the concerned workmen with effect from 1-5-72. It will appear in the evidence of this case and even according to the claims made by the workmen that it was a decision of the management on consultation with the union of the workmen that it was agreed that wagon loaders who have put in 240 days of attendance during the calendar year 1981 and 1982 shall be regularised and that the said policy is still being followed as stated by MW-1. It has also come in the evidence that after the said decision which was made on 13-9-83 the management was regularising the casual wagon loaders on their completing attendance of 240 days in a calendar year. Accordingly some of the concerned workmen as shown in the chart Ext. M-16, 21 of the concerned workmen were made permanent after the year 1983. The remaining concerned workmen therefore cannot be regularised or made permanent with effect from 1-5-72. The regularisation was made on the principle decided that the casual workmen completing 240 days attendance in a calendar year will be regularised as permanent workmen and as such the concerned workmen cannot be regularised with effect from 1-5-72 as there is no evidence to show that they had completed attendance of 240 days in 1972. The remaining casual workmen therefore will be regularised within one month from the date of publication of the Award.

An Award is accordingly passed.

I. N. SINHA, Presiding Officer

[No. L-20012(390)/82-D.III(A)/IR (Coal-I)]

K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 4 अप्रैल, 1989

का.प्रा. 816—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 मार्च, 1989 को प्राप्त हुआ था।

New Delhi, the 4th April, 1989

S.O. 816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 27th March, 1989.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(65)/1983

#### PARTIES :

Employers in relation to the management of State Bank of India, Jabalpur and their workmen S/Shri V. K. Chourasia, Agricultural Assistant, Gadarwara Branch and C. S. Rajput, Cashier at Civil Line Branch, Jabalpur, represented through the State Bank of India Employees Union, Bhopal Circle, 13, State Bank Officers Colony, Laxmipur, Jabalpur (M.P.).

#### APPEARANCES :

For Workmen : Shri D. P. Tiwari.

For Management : Shri R. G. Agarwal.

INDUSTRY : Banking.

DISTRICT : Jabalpur (M.P.).

### AWARD

Dated, the February 2, 1989

By Notification No L-12011/8/83-D.II(A) dated 14th December, 1983 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal, for adjudication :—

"1. Whether the action of the management of State Bank of India in relation to their Jabalpur Branch in not giving opportunity to Shri V. K. Chourasia, Agricultural Asstt; Gadawara Branch in writing test and interview for selection of Trainee Rural Development Officer is justified? If not, to what relief is the workman concerned entitled?

2. Whether the action of the management of State Bank of India in relation to their Jabalpur Branch in not giving higher post to Shri C. S. Rajput, Cashier at Civil Line Branch, Jabalpur, ignoring his seniority is justified? If not, to what relief is the workman concerned entitled?"

2. I will first take up the case of Shri V. K. Chourasia. The facts which are no longer in dispute regarding him are that he was employed in the State Bank of India (hereinafter called the Bank) since 20-7-1976. That Bank selects Trainee Rural Development Officers every year out of the Agricultural Assistants serving in the Bank. During October, 1978 to July, 1982 Shri Chourasia was serving at Gadawara Branch. Personnel Manager of Local Head Office, Bhopal issued a memo dated 2-12-1981 containing the eligibility criteria of the candidates for selection as Trainee Rural Development Officers and called for the names and recommendations. Subsequently, another memorandum modifying the earlier memorandum dated 30-1-82 was issued. The workman's case further is that he fulfilled all the conditions necessary for selection as Trainee, and the Branch Manager informed him that he had recommended his name for the purpose. Bank's Local Head Office at Bhopal held a written test of the eligible agricultural assistants for selection to the posts of Trainee Rural Development Officers for the years 1981-82 on 4-7-1982. The workman though eligible but however neither relieved nor informed that he has been permitted to sit in the said examination which was held on 4-7-82 at Bhopal. The workman and the Union submitted various representation dated 4-7-82, 4-10-82, 5-11-82 but without any result. The workman is entitled to be given promotion along with the other eligible candidates with retrospective effect etc.

3. Management in the beginning tried to contest the case on merits. However, vide their written statement of claim dated 7th January, 1985 management submitted that the workman will be given an opportunity to appear in the written test and examination and on qualifying for personal interview will be taken and the feasibility of giving seniority to the workman with retrospective effect will be examined by the management. However, vide their written statement of claim dated 15-7-1985 in continuation of the above statement of management stated as under :—

"Accordingly, Shri Chourasia was offered the opportunity and he appeared at the written test/interview and has qualified for the promotion. The management is now as a gesture of goodwill and to compensate the employee for the promotional opportunity missed by him, prepared to give him seniority with effect from 1st April, 1983 i.e. the date of appointment of the earlier batch of Trainee Rural Development Officers. Further, since Shri Chourasia has got the promotion in the batch who have been promoted from 1st August, 1984, he will not be given arrears of Salary and Allowances for the intervening period i.e. from 1st April, 1983 to 31st July, 1984. The management is agreeable to give him seniority with retrospective effect i.e. from 1-4-83 provided he foregoes his claim of back wages."

From the above it is crystal clear that the management as a matter of gesture of goodwill and to compensate the employee for the promotional opportunity missed by him is prepared to give him seniority with effect from 1st April, 1983 i.e. the date of the promotion of the earlier batch of Trainee Rural Development Officer and he got his promotion and will be given his arrears of salary and allowances for the intervening period from 1st April, 1983 to 31st July, 1984, but the management will give him seniority with retrospective effect from 1-4-83 provided he foregoes his claim for back wages.

4. Management has not put any cogent reason why he is disentitled to back wages. It is now well settled that promotion is a right of an employee and if he is deprived of the same without any cogent reasons Tribunals are empowered to rectify the error committed by the management. I am of the opinion that once the management concedes this right of retrospective promotion from 1st April, 1983 there appears no earthly reason why he should be deprived of his back wages. I therefore allow the claim of Shri V. K. Chourasia and direct to give him seniority with retrospective effect from 1-4-1983 and all his back wages with consequential benefits like seniority, bonus etc.

5. Next I will take up the case of Shri C. S. Rajput. The facts which are no longer disputed regarding him are that Shri Rajput joined his service in the State Bank of India as Cashier on 5-9-1969 and is posted at the Bank Civil Lines Branch, Jabalpur. The policy with regard to the appointment as Cashier and Deputy Cashier is laid down in Bank's Handbook on Staff Matters, Part II, Section VII, Chapter B. 5(a) which reads as under :—

The appointment of a Deputy Head Cashier at a Branch or a Cashier-in-charge at a Sub-Office is made according to the seniority of the Cashiers in the Region provided the service record of the concerned employee is satisfactory."

The policy regarding the appointment of Tellers is contained in the Bank's Circular PER/No. 47 of 1981 dated 15-7-1981 para 2 which is—

It has now been decided that the selection of Tellers will, hereafter, be made on combined zonal seniority of members of the Clerical and cash department staff. It has also been decided in consultation with the Award Staff Union that one time option may be given to clerks to opt for promotion either as a Head Clerk or a Teller and to Cashiers to opt for promotion either as a Deputy Head Cashier or a Teller. If, however, any Clerk/Cashier opts for both the eligible positions he will be promoted to the position which falls vacant first, refusal to accept promotion to the position opted for would debar the employee for in cadre and out of cadre promotion for a period of two years."

6. The case of the workman further is that the management adopted pick and choose method also and instead of appointing a workman as Dy. Head Cashier on the basis of the above circular another individual Shri R. S. Patel Cashier-cum-Clerk whose date of appointment in service was 1-2-1972 and was junior to the workman was appointed as Dy. Head Cashier at Tula Ram Branch, Jabalpur during September, 1982. That the workman was eligible for appointment as Teller with effect from 15-7-1981 i.e. the date of Bank's Circular No. 47/81, but the management did not appoint him as such, kept the vacancy unfilled and appointed one Shri J. P. Sahu, Clerk, of whose date of entry in his service was 17-11-1970 as a Teller at the Bank's Civil Lines Branch, Jabalpur, vide order dated 15-6-1982. Thus the workman has been deprived of his legitimate right twice and the juniors to him have been appointed on special allowance posts of Teller and Dy. Head Cashier ignoring his seniority and eligibility. The workman was entitled to be appointed as Dy. Head Cashier at the Bank's Civil Lines Branch vice Shri G. D. Gangan who had been retired several months ago. But the management did not appoint him in the said vacant post because he joined the membership of the union towards which the management possesses very hostile attitude. He suffered due to hostile attitude and discrimination of the management

vis-a-vis S/Shri J. P. Sahu, D. P. Gupta, Magan Lal Jain, Anil Kumar Wilson, R. S. Patel, S. S. Thakur and S. C. Upadhyay inspite of their being too juniors to the workman have been given promotion earlier than him ignoring his seniority, eligibility without any cogent reason. The workman is therefore entitled to the higher appointment of Dy. Head Cashier with retrospective effect from the date the post of Dy. Head Cashier fell due vacant on the retirement of Shri G. D. Gagan, Head Cashier at the Bank's Civil Lines Branch, Jabalpur and he should be deemed to be appointed as such in the interest of justice.

7. As in the case of Shri V. K. Chourasia so also in the case of Shri C. S. Rajput management did not reply to parawise allegations of the workman made in his statement of claim. It is settled law that if the opposite party does not specifically deny the allegations of statement of claim of other party he is deemed to have admitted the same. The assertion made by the workman regarding Shri C. S. Rajput briefly stated were that on the retirement of Deputy Head Cashier at the Bank's Civil Lines Branch, Jabalpur (Shri G. D. Gagan) who had retired several months ago before the issue of the Bank's Circular No. 47/81 management did not appoint him in his vacant post because he had joined the other union. The posting of Shri R. S. Patel and Shri J. P. Sahu who were juniors to the workman shows the conduct of the management. The same was the conduct of the management with respect of Shri D. P. Gupta, Shri M. L. Jain, Anil Kumar Wilson, S. S. Thakur and Shri S. C. Upadhyay who are also junior to the workman. But the management did not specifically admit or deny the allegations of the workman. Therefore they are deemed to have been admitted. The management filed statement of claim dated 2-1-1985 simply stating that the seniority of workman, Shri C. S. Rajput has not been affected, as shown in the list given below. Then again on 4th March, 1987 management in its arguments stated that Shri Rajput was at fault for not joining and the seniority of the workman has not been ignored. The application for amendment dated 14-12-87 was subsequently not pressed. Ultimately in its written arguments dated 19-1-88 management stated that in order to avoid the situation his transfer order dated 15-6-82 was issued transferring him to Tularum Branch of the Bank, Jabalpur instead of Jabalpur City Branch. But he did not comply on the pretext that Branch Manager is his relatives which ultimately was found to be incorrect. However, in order to avoid any such situation order dated 1-1-1983 was passed directing the posting of the workman as Head Cashier at Jabalpur Main Branch where he was previously working before his promotion. This shows that the workman has already been promoted and allowed to join with effect from 1-1-1983.

8. Now the only question remains whether the workman is entitled to arrears of his allowance from his due date to the date of his posting.

9. In this regard parties led no evidence. Management, however, filed certain documents and the workman admitted some of them which are marked Ex. M/1 to Ex. M/8 and he denied the other documents. Ex. M/1 to Ex. M/8 are thus proved documents. I will therefore go through them. Ex. M/5 and Ex. M/6 are the Circulars respectively dated 15-7-1981 and 15-1-82. In these circulars the policy of the management was that the eligibility will be determined on the basis of channel seniority. On behalf of the workman it has been cadre and out of cadre promotion for a period of two years."

"If, however, any Clerk/Cashier opts for both the eligible positions he will be promoted to the position which falls vacant first, refusal to accept promotion to the position opted for would debar the employee for in cadre and out of cadre promotion for a promotion for a period of two years."

In this connection it is pertinent to note that it was a case of the workman that he ought to have been posted vice Shri G. D. Gagan when the post fell vacant or at least he should have been given Civil Lines Branch when Shri J. P. Sahu was promoted. As already pointed out management did not specifically deny this allegation. Therefore they are deemed to have been admitted and proved the right of the workman to the post carrying allowance.

10. In this regard, the case of the management appears to be that he was posted on promotion to other Branches but he himself did not join on one pretext or the other. I am of the opinion that in view of the relevant portion of the circular reproduced above (Ex. M/5) the workman was entitled to be posted to the position which fell vacant first. Management did not comply with this direction inspite of workman's request vide Ex. M/1 and Ex. M/2. Therefore simply because his excuse of being relation of the Branch Manager was found incorrect vide Ex. M/3 and Ex. M/4 it does not disentitle the workman to the monetary benefits of the allowance post which he was granted ultimately vide Ex. M/8 from 1st January, 1983.

11. Inspite of the orders the management failed to produce the authentic original seniority list concerning the workman. Instead filed certain list which is not the seniority list of the nature kept in public offices. Therefore no reliance can be placed on the same.

12. For the reasons discussed above, I find that the workman, Shri C. S. Rajput, is entitled to the arrears of his allowance from the date of the order of his promotion i.e. 23rd April, 1982.

13. Consequently I answer the reference as under:—

1. That the action of the management of State Bank of India in relation to their Jabalpur Branch in not giving opportunity to Shri V. K. Chourasia, Agricultural Asstt. Gadarwara Branch in written test and interview for selection of Trainee Rural Development Officer is unjustified. He is entitled to seniority with effect from 1st April, 1983 and arrears of salary and allowances from that date with consequential benefits.
2. That the action of the management of State Bank of India in relation to their Jabalpur Branch in not giving higher post to Shri C. S. Rajput, Cashier at Civil Line Branch, Jabalpur ignoring his seniority is also unjustified. He is entitled to be posted to higher post of promotion from 23rd April, 1982 and allowances from that date.

Further both the workmen will get Rs. 100 each as costs of these proceedings, from the management.

V. S. YADAV, Presiding Officer

[No. L-12011/8/83-D.II(A)/IR-B(III)]

का. प्रा. 817.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दोर के प्रबन्धन के संबंध नियोजकों और उनके कर्म-कारों के बीच अनुबन्ध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिवक्ता, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 मार्च, 1989 को प्राप्त हुआ था।

S.O. 817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on the 27th March 1989.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT JABALPUR

Case No. CGIT/L.C(R)(42)/1988

PARTIES :—

Employers in relation to the management of State Bank of Indore, Regional Office, Bhopal and their workmen Shri Ramswaroop Peon, represented through the Asstt. General Secretary, M.P. Bank Employees Association, Gwalior Unit, Gwalior (M.P.).



## APPEARANCES :

For Workmen—Shri O. P. Gupta, Zonal Secretary.

For Management—Ashok Hasija, State Bank of Indore,

INDUSTRY : Bank.

DISTRICT : Bhopal (M.P.).

## AWARD

Dated, the 28-12-1988

By Notification No. L-12012/365/87 D.II(A), dated 20th April, 1988 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal, for adjudication:—

“Whether the action of the management of State Bank of Indore in not regularising Shri Ramswaroop as Peon with effect from 9-6-1979 is justified? If not, to what relief is the workman entitled?”

Statement of claim on behalf of the Union has been received by post and a date for filing the statement of claim by the management was fixed. On 18-11-1988 Shri Ashok Hasija, for the management filed a Memorandum of Settlement duly signed by the Zonal Secretary of the Union Shri O. P. Gupta on behalf of the Union and Shri Ashok Hasija and Shri N. L. Acharya on behalf of the management. A date for verification of the settlement was fixed on 25-11-1988 and on that date S/Shri O. P. Gupta, Zonal Secretary, G. S. Jadon, Regional Secretary and the concerned workman Shri Ramswaroop on behalf of the Union and Shri Ashok Hasija on behalf of the management verified the settlement. The terms of the settlement are as under :—

The Bank agrees to treat Shri Ramswaroop S/o Ramcharan as an employee on probation with effect from 9-6-79 and as a confirmed permanent employee in the subordinate cadre with effect from 9-12-79 with all consequent benefits with prospective effect from the date of this agreement. In other words, he will have no claim of promotional opportunity, officiating allowance, permanent posting on allowance carrying post, arrears of overtime, if any, other all liked benefits LFC etc. which have fallen due upto the period of this agreement by virtue of shifting of date of his appointment from 2-11-81 to 9-6-79.

However, he will be entitled for accumulation of leave earned by him from 9-6-79 subject to maximum limit permissible in terms of bipartite settlement.

The aforementioned terms of settlement appear to be fair, just and in the interest of the workman concerned, I therefore, record my award in terms of the settlement and make no order as to costs.

V. S. YADAV, Presiding Officer

[No. L-12012/365/87-D.II(A)]

P. V. SREEDHARAN, Desk Officer

नई दिल्ली, 7 अप्रैल, 1989

का. भा. 818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण, में, केन्द्रीय सरकार गन

कैरिज फैक्ट्री, जबलपुर के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपाट को प्रकाशित करती है। जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

New Delhi, the 7th April, 1989

S.O. 818.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur (M.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Gun Carriage Factory, Jabalpur and their workmen, which was received by the Central Government on 27-3-1989.

## ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT,

JABALPUR (M.P.)

CASE No. CIGT/LC(R)(80),(81),(82),(84),

(85), (88), (114), (115), AND (117) OF 1985

## PARTIES :

Employers in relation to the management of Gun Carriage Factory, Jabalpur and their workmen S/Shri Mohanlal, Krishnagopal, Santalal, Suresh Gangwar, P. K. Chouhan, Suraj Bhan Singh, Ram Lakhan Mishra, D. P. Upadhyaya and K. P. Sen represented through the G. C. F. Employees Union, T/92/2, Chitrangan Marg, GCF Estate, Jabalpur (M.P.).

## APPEARANCES :

For workmen—Shri R. Menon, Advocate.

For Management—Shri A. K. Chaube, Advocate.

INDUSTRY : Gun Carriage Factory DISTRICT : Jabalpur (M.P.)

## AWARD

Dated 23th March, 1989

These are nine cases referred to this Tribunal under Section 10(1)(d)(2A) of the Industrial Disputes Act for adjudication by the Central Government in the Ministry of Labour by various orders mentioned below. The question posed for adjudication in each case nos. (80), (81), (82), (84) and (85) 1985 is whether the action of the Gun Carriage Factory, Jabalpur (M.P.) in punishing the workmen by various orders of penalties/charge sheets to them for their Union activities is justified. If not, to what reliefs the workmen concerned are entitled. The dates of order of penalties/charge-sheets mentioned in the reference order are noted below against each case of workman concerned.

Case No.	Reference Notification No. & Date	Name of workman concerned	Dates of penalty
CGIT/LC(R)(80)/85	No. L-14012 (ii)/85-D.II (B) Dated 23-9-85.	Mohan Lal Turner 'B'	26-12-81, 21-3-82, 24-6-83, 24-1-84 and 18-5-84.
CGIT/LC(R)(81)/85	No. L-14012(12)/85-D.II (B) dated 23-9-85.	Krishan Gopal, Electrician 'B'	24-6-83, 2-6-83 and 26-7-83.
CGIT/LC(R)(82)/85	No. L-14012(5)/85-D.II (B) dated 23-9-85.	Santalal Patel	16-6-85, 24-1-84 and 19-1-85.
CGIT/LC(R)(84)/85.	No. L-14012(9)/85-D.II (B) dated 23-9-85.	Suresh Gangwar	3-6-81, 2-3-82, 17-3-82, 18-6-83, 1-3-83 and 28-2-84.
CGIT/LC(R)(85)/85.	No. L-14012(10)/85-D. II (B) dated 23-9-85.	P.K. Chouhan	24-1-84 and 18-5-84.
CGIT/LC(R)(88)/85.	No. L-14012(7)/85-D. II (B) dated 20-9-85.	Suraj Bhan Singh	7-12-81, 21-3-82, 20-4-82, 18-5-83, 6-6-84, 18-7-84 and 19-1-85.



The dispute for adjudication in other three reference cases Nos. CGIT/LC(R) (114), (115) and (117)/85 are slightly different from the above six cases which is whether the action of the management of Gun Carriage Factory, Jabalpur (M.P.) in punishing the workmen by various penalties is justified. If not to what relief the workmen concerned are entitled?

The dates of order of penalties mentioned in the reference order are noted below against each workman. However in the instant cases workmen have pleaded that the action of the management in penalising them is due to their trade union activities. Therefore the question for determination in all the nine cases similar.

Case No.	Reference Notification No. & Date	Name of workman concerned	Dates of Penalty
CGIT/LC(R) (114)/85.	No. L-14012 (16)/85-D. II (B) dated 6-12-85.	Rani Lakhan Mishra, Carpenter 'B'.	21-3-82 and 24-6-83.
CGIT/LC(R) (115)/85.	No. L-14012 (17)/85-D. II (B) dated 11-12-85.	D.P. Upadhyaya, Turner 'B'.	21-3-82 and 24-6-83.
CGIT/LC(R) (117)/85.	No. L-14012 (19)/85-D. II (B) dated 11-12-85.	J.P. Sen, Turner	30-11-1980, 21-3-82, 12-1-84, 22-8-84 and 19-1-86.

Since the allegations and counter allegations made against each other are common in nature and question of law involved in all the above nine cases is the same, it would be convenient to deal with all the cases together this award which will govern all 9 above cases.

2. It is a common ground that all the above workmen concerned are the employees of the Gun Carriage Factory at Jabalpur and they were the active members or office bearers of G.C.F. Employees Union a registered body functioning at Jabalpur since 1970. The admitted and proved facts further are that Shri B. K. Ghai joined as the General Manager of the Gun Carriage Factory, Jabalpur (hereinafter referred to as the Factory) on or about 9th July, 1980 and somehow there developed a tussel between the active members of the G.C.F. Employees Union (hereinafter referred to as the Union) and Shri B. K. Ghai, Union not only submitted Memorandum to the Defence Secretary, but also made some complaints also against Shri B. K. Ghai and resorted to hunger strike, notices of strike, taking out handbills; news items etc. against him. On the other hand, Shri B. K. Ghai in his capacity as the General Manager of the Factory issued several charge-sheets against almost all active members of the Union including the above named workmen concerned. The imputation of allegations against the workmen in general are that they participated in an unauthorised gathering surrounded the car in which General Manager, Gun Carriage Factory was seated, shouted provocative slogans, unauthorisedly indulged in writing slogans against G.C.F. Management on the perimeter walls of Government building resulting in defacing the said Government building which had to be white/colour washed at the Factory expenses, absented from their place of work without permission. All these acts of workmen constituted gross-misconduct surversive of discipline.

3. The cases of the workmen further are that strike ballot was taken out on 11-8-81 on behalf of the Union and 98 per cent of the workers of the Factory voted in favour of the strike. The management, therefore, came to the conclusion that their action was not proper and negotiated settlement dated 13-1-81 settling the charge of demands of the Union and regarding the pending charge-sheets General Manager expressed the view that domestic enquiry will be prolonged and neither party will gain thereby and therefore suggested and gave personal assurance that if the workmen give reply to show cause notices admitting the allegations he will merely give an oral warning. Believing this assurance and with a view to maintain peaceful atmosphere and harmonious industrial relation the workmen bowed down and acted as suggested by the General Manager. But instead of taking initiative in the interest of industrial peace and harmony, the General Manager took vindictive and revengeful attitude against the office bearers and active members of the Union and used his arms and ammunition for victimisation. Consequently issued fresh charge-sheets and memos and thereafter imposed severe punishment against active and leading trade union leaders. Cases of the workmen further are that being illiterate they had asked for supply of Translation of English Charge-sheets/Memos in Hindi which was

even denied to them. Further the workmen contended that Shri B. K. Ghai, General Manager, was himself an aggrieved party being a complainant and witness, therefore he could not have issued charge-sheets nor could have imposed punishment. The punishment imposed on the workmen is bad in law on the following grounds amongst others :—

1. Shri B. K. Ghai being an aggrieved party and the complainant and a witness he could not have issued the charge-sheet and imposed any punishment.
2. The punishment imposed is an act of victimisation and unfair labour practice and against the fundamental rights of trade union activities.
3. He took into consideration various documents and statements produced behind the back of the workmen concerned and which were never made available to them.
4. The workmen being illiterate, inspite of asking for Hindi version of Memos and charge-sheets, were not supplied to them. Thus they were deprived of a reasonable opportunity to defend themselves.

The workmen, therefore, prayed that the orders of punishment be set aside and the management be directed to revive increments etc. held so far by the above penalty orders.

4. On the other hand the case of the management in general i.e. in all the case referred to above is that the workmen were punished for gross misconduct in the past, for which due enquiry was held. Orders were passed on consideration of material evidence against them. The penalties imposed on them were fully merited. The same were just and proper and are not liable to be questioned. It is further contended that the workers led the procession to incite other workers to join the illegal strike planned. The disciplinary authority after careful consideration of the representations and the prima facie evidence available on by the parties besides some of the workmen gave their concerned are not entitled to any relief.

5. The documents filed in these cases have been relied on by the parties besides some of the workmen gave their own statement on affidavit and were cross-examined by the Counsel for management.

6. The main challenge to the show cause notice and the departmental punishment is that Shri B. K. Ghai was himself in the position of complainant and a witness. Therefore he could have neither issued the charge-sheets nor could have imposed the punishments. I have gone through the records of all the cases produced before me and I find that not only the defence documents but documents relied on by the management clearly go to show that the movement of the Union members was directed

against the General Manager, Shri B. K. Ghai and he was at least one of the aggrieved party, and personally prejudice against a section of the active members of the Union.

7. On behalf of the management, it has been contended that active members of the Union went beyond the legitimate activities of the Union and they had absolutely no right to act in the manner as they did. Therefore they made themselves liable to the punishment awarded to them for their misconduct subversive of discipline as charged. This may be true, but the law of natural justice requires that such activities of the Union members or office bearers as are subversive of discipline amounting to misconduct has to be proved by legal evidence before a person could be punished. In the instant cases, except the allegations in the charge-sheets there is nothing on record at least before this Tribunal to substantiate the allegations of the management. On the other hand, some of the applicants workmen have filed affidavits and they have been cross-examined by the management Counsel. But nothing material is brought out in their cross-examination to discredit their plea in relation to the charges levelled against them. If the management wanted to rebut the allegations made in the affidavits it should have either filed the counter affidavit of Shri B. K. Ghai or at least of some responsible officer to refute or rebut the allegations but nothing has been done. I, therefore, see no reason to disbelieve the statement on affidavits of the workmen (Pratap Singh Vs. State of Punjab AIR 1964 SC. 72 para 14 relied on).

8. The salient feature of the Affidavits of S/Shri Mohan Lal (Case No. 80/85), Santalal (Case No. 82/85), Suresh Gangwar (Case No. 84/85), P. K. Chouhan (Case No. 85/85), Ram Lakhan Mishra (Case No. 114/85), are that they were the active members of the Union. Shri Ghai started harassing workers. Union therefore brought out hand bills, news items etc. against him and resorted to hunger strike etc. With a view to suppress union activities Shri B. K. Ghai issued false charge sheets to active union workers. But looking to the result of strike ballot he settled the charter of demands of the Union and befooled them to admit the charges. Documents and statements of witnesses mentioned in the charge-sheets were not supplied. They are illiterate. Therefore they asked for a Hindi version but they were refused the same.

9. The facts of Gujarat Steel Tubes Ltd. Vs. Its Mazdoor Sabha (AIR 1989 SC 1896) are on all fours with the facts of the present cases. Relevant extracts of the above case are being reproduced below :—

"The form of the order of termination or the language in which it is couched is not conclusive. The court will leave the spot to see the true nature of the order....."

The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is....."

A disciplinary inquiry resulting in punishment of particular delinquents cannot but be illegal if the evidence is of mass misconduct by unspecified strikers led by leaders who are perhaps not even workmen.

The workmen were on strike. The strike was illegal. The management was fruit to the production was paralysed. The strikers allegedly indulged in objectionable activities. The exasperated management, hit back by ordering their discharge for reasons set out in several pages in the appropriate contemporaneous proceeding. Misconduct after misconduct was flung on the workers to justify the drastic action.

Held :—The orders of discharge were bad on this score alone."

10. From the affidavits and attitude of the Disciplinary Authority it appears that Shri Ghai was highly prejudice against active member and office bearers of the Union and went out of the way to punish and to victimise them. No doubt there are cases where Disciplinary Authority holds the position of complainant or an aggrieved party. Question arises whether in such a category of cases he can act as a judge. To my mind he cannot. For such a contingency the Govern-

ment has framed instructions in C.C.S. (C.C.A.) Rules 1965 on page 60 item no. 3(a) which reads as under :—

"(3) When President's power for nominating an ad hoc disciplinary authority to be invoked—

(i) .....

(ii) When the competent authority is unable to function as the Disciplinary Authority. In a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of his being nomination of an ad hoc disciplinary authority by a material witness in support of the charges, the proper course for that authority is to refer such a case to Government in the normal manner for nomination of a ad hoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of the C.C.S. (C.C.A.) Rules, 1965."

Under this Rule Shri B. K. Ghai should have referred the matter to the Government for appointment of an ad hoc disciplinary authority to conduct just, legal and impartial domestic enquiry against the workmen concerned. Instead of doing so he himself became the prosecutor and judge at the same time. It is now well settled that no person could be a judge in his own cause and no witness could testify that his own testimony is true as has been held in the cases of 980-II-IJJ p. 270 P.J. Warkari Vs. K. V. Karamjkar; 1986 SLR(i) 558 S. Tiwari Vs. State of M.P.; 1984 MPLJ 516. But exactly this is what has been done by Shri B. K. Ghai. Thus on this ground alone the entire proceedings are vitiated being contrary to law C.C.S. (C.C.A.) Rules and against natural justice.

11. In view of the above, it is crystal clear that the action of the General Manager, Shri B. K. Ghai, against the active members of the union amounts to victimisation and unfair labour practice in all the charge-sheets given to the workmen on account of their Union activities. However, I will deal briefly each case of the workmen one by one.

## 12. CASE NO. 80/85—MOHAN LAL, TURNER 'B':

From the record of punishments it appears that the workman was penalised with stoppage of one increment for one year vide order dated 26-12-1981 for the alleged offence that on 19-10-1981 he objected to detail himself on the night shift again for one more week and threatened Shri R. D. Sharma, C/Men of dire consequences. Except the record of punishment filed by the management there was nothing on record to show that the order dated 26-12-1981 was passed bonafide. The management vide order dated 16-6-87 was therefore directed to produce relevant documents but they have failed to produce the documents or evidence/affidavit by way of rebuttal to deny the affidavit of the workman and to show that the order of punishment was not passed on account of trade union activities of the workman. For non-production of record, justification or otherwise of action and punishment is vitiated. This order is therefore liable to and is hereby vitiated and therefore set aside. The other orders dated 21-3-82, 24-6-83, 24-1-84 and chargesheet dated 18-5-84 are also for taking active parts in trade union activities i.e. for unauthorised assembly, organising procession and shouting slogans etc. In his affidavit Monhanlal has stated that he was an Executive Member of the Union. Because he was an active member of the Union Shri B. K. Ghai was personally prejudiced against him and the Union members/leaders. Therefore Shri Ghai issued penalty orders and charge-sheet who being an aggrieved party should not have done this himself. I have already stated that no counter affidavit has been filed either by Shri B. K. Ghai, General Manager or by some responsible officer of the management. Therefore I see no reason to disbelieve the statement on affidavit of Shri Mohan Lal, workman concerned. I therefore hold that the penalties imposed on the workman vide orders dated 21-3-82, 24-6-83, 24-1-84 and the charge sheet dated 18-5-1984 was issued by the management because of his trade union activities. Consequently the above orders against Mohan Lal, are vitiated and therefore set aside. The workman is, therefore, entitled to all the benefits as if there was no order of penalty.

CASE NO. 81/85—KRISHNA GOPAL, ELECTRICIAN 'B'.

13. The case of the workman, Shri Krishna Gopal, with regard to penalties dated 14-6-88 and charge-sheets dated 2-6-83 and 26-7-83 against him is that the General Manager of the Factory took the vindictive and revengeful attitude against the office bearers and the executive members of the Union for their trade union activities and punished him along with other union leaders. By order dated 24-6-83 he was punished with the stoppage of one increment without cumulative effect for one year for the alleged misconduct of unauthorisedly organising an assembly of workers outside the factory Main Gate, led procession and shouted slogans. The workman was charge-sheeted vide Memo dated 16-2-83 accompanied with the statement of imputation of misconduct or misbehaviour. Further being an aggrieved party Shri B. K. Ghai, General Manager, has not followed the procedure laid down in the C.C.S. (C.C.A.) Rules 1965 on page 60, item No. 3(ii) (reproduced above) which should have been followed.

14. I have gone through the penalty order dated 24-6-83. It appears that the workman has not made any representation or reply to the charge-sheet because he had requested twice for Hindi translation. Shri B. K. Ghai General Manager without reply or his admission merely on examination of prima facie evidence available on record, held that the charge of Gross-Misconduct as proved and passed the penalty order. I have already held that the General Manager Shri Ghai was not happy with the Union leaders because of their union activities. Organising peaceful assembly, procession and shouting slogans etc. is a fundamental right and the weapon of a trade union movement. Being an aggrieved party he has not followed the procedure laid down in the C.C.S. (C.C.A.) Rules 1965. For this reason I hold that the action of the General Manager in stopping one increment vide order dated 24-6-1983 is illegal, arbitrary and with a view to victimise the workman due to his trade union activities. The workman is entitled to the increment held up vide order dated 24-6-1983.

15. Regarding the charge-sheets dated 2-6-83 and 26-7-83 against the workman, I find that inspite of the order dated 16-6-87 to produce relevant documents pertaining to the above charge-sheets management failed to produce them to justify their action against workman. The workman pleaded that he is being punished because of his trade union activities mala-fidely without any material in possession of management. Management in its pleading simply stated that Court enquiry is in progress and no record has been filed. This does not amount to specific denial. The workman has also pleaded that the General Manager, Shri Ghai was himself a complainant and an aggrieved party and has not followed the procedure laid down in C.C.S. (C.C.A.) Rules 1965 which appears to be true. In the circumstances I hold the above charge-sheets are vitiated, desperately looking to these 6 years delay in getting them disposed off.

Case No. CGIT(LR)(82), (84), (85), (114), (115) & (117) 1989.

16. Now I will take up together the various orders passed by the management in respect of the above mentioned cases as to my mind the punishment imposed on these workmen concerned for the alleged misconduct are common in nature.

17. I have gone through the penalties imposed on the workman, Santalal (Case No. 82/85) dated 16-6-85, 24-1-84 and 19-1-85, Suresh Gangwar (Case No. 84/85) order dated 3-6-81, 2-3-82, 17-3-82, 18-6-83, 1-9-83 and 28-2-84, P. K. Chouhan (Case No. 85/85) order dated 24-1-84 and 18-6-84 penalty against Surajbhan Singh (Case No. 88/85) dated 7-12-81, 21-3-82, 18-6-83, 6-6-84 and 19-1-85 (orders dated 20-4-82 and 18-7-84 will be dealt with separately), order in respect of Shri Ram Lakhan Mishra and Shri D. P. Upadhyaya (Case No. 114/85) and (115/85) respectively dated 21-3-82 and 24-6-83 and order against Shri K. P. Sen (Case No. 117/85) dated 21-3-82, 2-1-84, 22-8-84 and 19-1-85. Order dated 30-11-1980 against K. P. Sen will be taken up separately.

18. The workman concerned in the above cases have all pleaded that they were active members of the Union and they were negotiating the cause of the workmen with the

management. The penalty orders have been passed by the General Manager for the alleged misconduct i.e. for unauthorised assembly, organising procession and shouting slogans etc. have further pleaded that Shri Ghai, General Manager being a complainant and an aggrieved party could not have functioned as a disciplinary authority. He did not follow the procedure laid down in C.C.S. (C.C.A.) Rules, 1965 for such contingency. Shri Santalal, Suresh Gangwar, P. K. Chouhan, Ram Lakhan Mishra have also filed affidavits to this effect. These allegations have not been rebutted by the management by filing affidavit either of Shri Ghai or of some responsible officer of the management.

19. I have already discussed above and held that the action of the management imposing punishment for such alleged union activities is illegal, arbitrary and with a view to victimise the workman concerned. In the instant cases also to my mind the penalties imposed on the workman are illegal, arbitrary and with a view to victimise the workmen concerned. Further being an aggrieved person Shri B. K. Ghai, General Manager should have followed the procedure laid down in the C.C.S. (C.C.A.) Rules, 1965 on page 60, item no. 3(ii) reproduced above. Therefore the above orders penalising the above named workmen are vitiated and as such are hereby set aside.

20. Now I will take up the remaining penalty orders dated 20-4-82 and 18-7-84 in the case of Suraj Bhan Singh (Case No. 88/85) and order dated 30-11-1980 against Shri K. P. Sen (Case No. 117/85).

21. I have gone through the records of Shri Suraj Bhan Singh and find that no record with respect to punishment imposed on the workmen is on record. Management was, therefore, directed to file those relevant documents vide order dated 16-6-87. But the management has pleaded no document on record to show that the penalty were imposed after a proper show cause notice and after supplying necessary material documents to the workmen and after having received their reply of the show cause notice. It appears that the workmen demanded certain translations and management straight away imposed penalty on the basis of documents on record before the Disciplinary authority. But the same have not been placed before this Tribunal for considering the action of the management. In these circumstances the action of the management against Shri Suraj Bhan Singh cannot be held to be justified specially looking to the facts that punishing authority/officer who issued the charge-sheet was himself a complainant and aggrieved party. In such circumstances the procedure laid down in the C.C.S. (C.C.A.) Rules 1965 on page 60 item no. 3(ii) reproduced above should have been followed.

22. Regarding the punishment order dated 30-11-1980 imposed on Shri K. P. Sen, it appears that the penalty order is with regard to the Memo No. 110518/1977 dated 11-8-1977 (issued previous to the joining of Shri B. K. Ghai, General Manager charging him that he left his place of working during the office hours in the month of February, March, April and May, 1977 (dates and timings of absence are mentioned in the charge-sheet Ex. M/1). The workman submitted his reply on 8-5-1980 (Ex. M/2). Thereafter the enquiry was held by Shri S. Rajagopalan, DM-I. The Enquiry Officer submitted his report (Ex. M/13) finding the charges proved and the Disciplinary Authority passed an order dated 30-11-1980 (Ex. M/15) imposing the penalty of withholding of one increment.

23. I have gone through the enquiry papers (Ex. M/1 to Ex. M/15). Shri K. P. Sen in his statement before the Enquiry Officer stated that he being a Union Leader was allowed to be away for trade union work. Therefore during the period and time for which he was charge-sheeted he was away from the section in his capacity of Secretary of G.C.F. Employees Union. The management examined three prosecution witnesses before the Enquiry Officer but the relevant witness to the present case is P.W. 1, who in his cross-examination has admitted while replying to question no. 11 that he has knowledge that Union leader is allowed two hours i.e. from 11.30 to 2.30 p.m. for trade union work. But I find that there is no order in writing on record to support either the version of the workman concerned or

the management's witness to show that Shri Sen was allowed to be away from duty for trade union activities. Besides this, the time mentioned in the charge-sheet when he was away from his duty is other than 11.30 to 2.30 p.m. as admitted by P.W. 1. Therefore I find the enquiry report and findings of the Enquiry Officer are based on the evidence produced before him and is therefore a valid one. The order passed by the Disciplinary Authority dated 30-11-1980 cannot therefore be challenged.

24. Management has not pleaded for an opportunity to prove misconduct before this Tribunal. Therefore, as held in the case of Shambhu Nath Goel Vs. Bank of Baroda (AIR 1984 SC 289) no such opportunity can be given.

25. In view of the above, I hold in all the nine cases under reference as under :—

1. Case No. 80/85—Mohan Lal 'B'.—Penalty orders dated 26-12-81, 21-3-82, 24-6-83, 24-1-84 and charge-sheet dated 18-5-1984 held to be vitiated and are set aside being illegal, arbitrary and against the principle of natural justice. Workman is entitled to all benefits.

2. Case No. 81/85—Krishna Gopal—Penalty charge-sheets dated 2-6-83 and 26-7-83 held to be vitiated and order dated 24-6-83 is set aside being illegal, arbitrary and against the principle of natural justice. Workman is entitled to the benefits held up so far vide above orders.

3. Case No. 82/85—Santalal.—Penalty orders dated 16-6-85, 24-1-84 and 19-1-85 are set aside being vitiated, illegal, arbitrary and against the principle of natural justice. Workman is therefore entitled to the benefits accrued to him.

4. Case No. 84/85—Suresh Gangwar.—Penalty orders dated 3-6-81, 2-3-82, 17-3-82, 18-6-83; 1-9-83 and 28-2-84 are set aside being vitiated illegal arbitrary and against the principle of natural justice. Workman is entitled to all the benefits accrued to him.

5. Case No. 85/85—P. K. Chouhan.—Penalty order dated 24-1-84 and charge-sheet dated 18-5-84 is set aside being illegal and arbitrary. He is entitled to all benefits held up.

6. Case No. 88/85—Suraj Bhan Singh.—Orders dated 7-12-81, 21-3-82, 20-4-82, 18-6-83, 6-6-84, 18-7-84 and 19-1-85 are vitiated and are set aside being illegal and arbitrary. Workman is entitled to all the benefits held up so far.

7. Case No. 114 and 115/85—Ram Laxhan Mishra and D. P. Upadhyay.—Orders dated 21-3-82 and 24-6-83 passed against both the workmen are vitiated and are set aside being illegal and arbitrary. They are entitled to the benefits as if no penalty was imposed on them.

8. Case No. 117/85—K. P. Sen.—Penalty orders dated 21-3-82, 12-1-84, 22-8-84 and 19-1-85 are vitiated and set aside being illegal and arbitrary and against the principle of natural justice. Workman is, therefore, entitled to all reliefs from the date he has been penalised.

Regarding the penalty dated 30-11-1980, against K. P. Sen I hold that the action of the management was justified and the workman is not entitled to any relief with respect to the order dated 30-11-1980.

26. Management is therefore, directed to comply with the above orders within three months from the date of this order otherwise the amounts due to the workman will carry interest @10 percent of the total amount due from the date of this award. I make my award in all the nine references accordingly. No order as to costs.

V. S. YADAV, Presiding Officer

[No L-14012/5/85-D.II(B)]

का. प्र. 819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण से, केन्द्रीय सरकार सीनियर [मुद्रितेन्डेंट आफ पोस्ट आफिस, नागपुर के प्रबन्धन में सम्बद्ध नियोक्तों और उनके कामकाजों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-3-89 को प्राप्त हुआ था।

S.O. 819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur (M.P.) as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Offices, Mofussil Division, P.O. Patwardhan Ground, Nagpur and their workmen, which was received by the Central Government on the 27-3-89.

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(18)/1986

#### PARTIES:

Employers in relation to the management of Senior Superintendent of Post Offices, Mofussil Division, P.O. Patwardhan Ground, Nagpur-440012 and their workman, Shri S. N. Gaighate, Treasurer (Postal Assistant), represented through the President, All India P&T Employees Federation, Headquarters, 52 Telecom Colony, Nagpur-440022.

#### APPEARANCES:

For Workman—Shri A. S. Bhagat, Advocate.

For Management—Shri V. V. Vidwans, Advocate.

INDUSTRY : P & T.

DISTRICT : Nagpur (M.S.)

#### AWARD

Dated, the 26th December, 1988

The Central Government in the Ministry of Labour vide its Notification Order No. L-440011(3)/85-D.II(B) dated 24th January, 1986 referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the management of Sr. Superintendent of Post Offices, Nagpur Mofussil Division, Nagpur in awarding punishment of stoppage of increment to pay for 35 months to Shri S. N. Gaighate, Treasurer (Postal Assistant) Tirora Post Office with effect from 1-2-1984 and also withholding of his Promotion to Lower Selection Grade Cadre with effect from 30-11-1983 is justified? If not, to what relief the workman is entitled?"

2. It is common ground that Shri S. N. Gaighate (hereinafter referred to as the workman) was working as Treasurer (Postal Assistant) for the period from August 1981 to April 1982 at Post Office Tirora. He had put in about 18 years service. On 30-9-1982 a Memo of charges for imposing minor penalties under Rule 16 of C.C.S. (C.C.A.) Rules 1965 was issued to him on the following allegations :—

"Shri S. N. Gaighate, was working as Treasurer, Tirora so during the month of February 1982 Shri S. N. Gaighate had accepted an amount of Rs. 55411.50 with 557 MO forms from the Tahsildar Tirora for booking of MOs on 5-2-82 without the knowledge of SPM Tirora Shri S. N. Gaighate had kept the cash of Rs. 55411.50 out of a/c till 9-2-1982. On 10-2-1982 Shri Gaighate, had handed over the charge of Treasury branch to another official. At that time he had given cash of Rs. 1411.50 short.

This fact was also admitted by Shri S. N. Gaighate, in his written statement, Shri S. N. Gaighate had voluntarily credited an amount of Rs. 1280 on 11-2-82

and remaining amount has been credited on 17-2-82 by the Sigr. It is therefore alleged that Shri S. N. Gaigbate, is responsible for non-accounting for the amount on the day of its receipts by him, and as such he contravened the provisions of rule 4 of FHB Volume I and also Rule 244A of P&T Man. Vol. VI Part I."

The workman vide applications dated 9-2-83, 29-3-83 and 21-1-83 applied for copies of certain documents to enable him to prepare his defence. The management furnished copies of certain documents only but refused to furnish him the following documents for the reasons stated therein i.e. :-

"The official has requested for copies of S.O. account dated 10-2-82, 11-2-82, 17-2-82, they are irrelevant hence can not be supplied.

The official has requested for copy of the report on 10-2-82 by S.P.M. to SSPOS Nagpur Mfl. Dn. Nagpur. This is also irrelevant hence can not be supplied. The official has requested for the statement of all the officials relating to this case. The statement asked for are considered irrelevant, hence can not be supplied.

He therefore submitted his reply to the show cause notice without the aforesaid documents. Senior Supdt. of Post Offices Nagpur, Shri Vidhik Chandani vide his order dated 29-3-83 awarded him minor punishment that the next increment due of Shri S. N. Gaigbate, Bhandara Ordnance Factory withheld for the period of 35 months. This will not have the effect of postponing of his future increment. The workman availed his appellate right but without any result. Ultimately on the failure report this reference has been made by the Central Government, Ministry of Labour, New Delhi.

3. Parties filed their statements of claim before this Tribunal and this Tribunal framed the following issues :-

#### ISSUES

1. Whether the punishment awarded is legal and proper ?
2. Whether the D.E. is legal and proper ?
3. Whether management is entitled to prove misconduct before this Tribunal ?
4. Relief and costs ?

4. Issues No. 1 to 4 :- Parties have raised various grounds. I will take up the only material once. Management has not only challenged the jurisdiction of this Tribunal but also had filed writ petition no. 830/87 for quashing the order of making the reference to this Tribunal by the Ministry. Hon'ble High Court of Nagpur vide its order dated 27-4-1987 was pleased to reject the writ petition and the various attempts for Special Leave to the Supreme Court were turned down. But the management persisted in his objection that the Postal Department is not an industry. Therefore this Tribunal has no jurisdiction under the Industrial Disputes Act, 1947.

5. In support of the above contention reliance is placed on Bangalore Water Supply and Sewerage Board Vs. A. Raiappa and others (AIR 1978 SC 548) wherein what constitute an industry has been exhaustively considered by the Hon'ble Supreme Court and laid down certain dominant nature of test to determine the same. It has also considered certain organisation and Governmental Departments in the light of sovereign functions of the State and laid down that "Court should, therefore, so far as possible, avoid formulating or adopting generalisations and hesitate to cast the mould which would not permit of expansion as and when necessity arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business (Page 594)". From the above, it is crystal clear that in the above authority Hon'ble Supreme Court has not specifically laid down that the Postal Department of the Government of India is not an 'industry'. In 184 (49) Indian Factory and Labour Reports

p. 57; 1983 Lab. I.C. 135 (Ker.); 1981 Lab. I.C. (NOC) 68(Cal.) it has been laid down that the Postal and Telegraph Department is an 'industry' and full and part time employee of the postal department are workmen for the purpose of Industrial Disputes Act. In view of the above pronouncement I hold that the Postal and Telegraph Department of the Government of India is an industry and the applicant is a workman within the meaning of I.D. Act, 1947. Therefore this Tribunal has jurisdiction.

6. Next I will take up grounds of attack urged on behalf of the workman. At the very outset it has been contended that the workman had applied for supply of copies of S.O. Accounts dated 10-2-82, 11-2-82 and 17-2-82. He had also applied for supply of report made on 10-2-82 by the S.P.M. Senior Superintendent of Post Offices Nagapur. He has further applied for the copies of the statement of the officials relating to this case whose statements were recorded during preliminary enquiry. But the management refused to supply them on the ground that they were irrelevant.

7. In the enquiry report (Ex. M/1) the Enquiry Officer tried to justify the refusal to supply copies but I find that the reasons given by him are not cogent. On the other hand, the workman has pointed out in his various representations in this regard the relevancy of those documents for the purpose of defence. Regarding S.O. hand to hand receipt book it has been pointed out that the actual proper transaction regarding showing the same amount have been accepted by the Memo Issue Clerk and then transfer to treasurer and such amount related to the deducting of M.O. Regarding the reports submitted by the S.P.M. it has been pointed out that it indicates the clear picture of the admission and confession committed by the S.P.M. Regarding the statement of the officials whose statements were recorded during preliminary enquiry it has been pointed out that it will show the factual position. Thus it has been contended that these documents were not only relevant but they were very material documents for the purpose of his defence. For non-supply of these documents the workman was not only hampered in his defence but it violates the principle of natural justice. In the case of State of Punjab Vs. Bhagat Ram (AIR 1974 SC 2335) and in the case of State of Uttar Pradesh Vs. Mohd. Sharif (AIR 1982 SC 972) it has been held that the statement of witnesses recorded during preliminary enquiry neither furnished nor informed to see them amounts to denial of reasonable opportunity. Similar view was expressed in ATR (1982) (Cat) 24. In its latest judgment Kashinath Dixit Vs. Union of India (AIR 1986 SC 2118) it has been held :-

Where the Government refused to its employee who was dismissed, the copies of the statements of witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Government failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Art. 311(2) inasmuch as the employee has been denied reasonable opportunity of defending himself.

I have already considered the documents which were refused to be supplied to the workman and I find that they were very material documents for the purpose of his defence. Denial to either furnish the copies or allow the workman to have an access to those documents amounts to denial of reasonable opportunity since it has prejudiced him in his defence.

8. On behalf of the management it has been contended that this was a case only under Rule 11 for minor penalty, therefore there is no question of any prejudice being caused to the workman. I am unable to agree. In such cases where the management has only the right to issue show cause notice

and on his explanation alone has the right to inflict punishment it becomes all the more necessary that the workman is given the relevant documents so that he is not debarred from putting up his defence on the basis of those documents. In the instant case, though punishment awarded is of only withholding increments but the disciplinary authority has used almost his full powers of granting of punishment of stoppage of increment for 35 months and further withholding of time bound LSG promotion. In the circumstances I am of the opinion that the finding of the Enquiry Officer are vitiated and they are not legal and proper and the same are against the principle of natural justice. In its pleading management has nowhere pleaded for an opportunity to prove misconduct before this Tribunal. Therefore as has been laid down in the case of Shambhunath Vs. Bank of Baroda (AIR 1984 SC. 279) the management is not entitled to an opportunity to prove misconduct before this Tribunal. Under the circumstances I need not consider the legality and propriety of punishment. I hold and decide the issues accordingly.

9. Coming to the relief, I am of the opinion that the record of enquiry shows that some irregularity was committed by the workman for which he either suomoto or under compulsion deposited the amount. This deposit does not amount to penalty under the C.C.S. (C.C.A.) Rules, 1965.

10. Under the facts circumstances of case I answer the reference as under :—

That the action of the management of Sr. Superintendent of Post Offices, Nagpur Mofussil Division, Nagpur in awarding punishment of stoppage of increment to pay for 35 months to Shri S. N. Gaighate, Treasurer (Postal Assistant), Firora Post Office with effect from 1-2-1984 and also withholding of his promotion to Lower Selection Grade with effect from 30-11-1983 is unjustified. He is entitled to the increment and promotion to LSG from the due date i.e. 1-2-84 and 30-11-1983 respectively. He will be notionally fixed on LSG post with effect from 30-11-1983. He is entitled to LSG scale pay from the date of this order/award. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-40011/3/85-D.II(B)]

का.प्रा. 820—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के द्वारा इन्डिया रेडियो जबलपुर के प्रबन्धन से सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ।

S.O. 820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of All India Radio, Jabalpur and their workmen which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/IC(R)/95 of 1986

#### PARTIES:

Employers in relation to the management of All India Radio, Jabalpur and their workman, Shri P. K. Patel, Shepura-Bilfonti, Behind Police Station, Tah. Pattan, Dist. Jabalpur (M.P.)

#### APPEARANCES:

For Workman—Shri R. K. Gupta, Advocate.

For Management—Shri Anoop G. Chaudhari, Advocate.

INDUSTRY : All India Radio

DISTRICT : Jabalpur (M.P.)

AWARD

Dated 14-10-1988

(This is a reference made by the Central Government in the Ministry of Labour, New Delhi, vide its Notification No. L-42012/49/85-D.II(B) dated November, 1986 for adjudication of the following dispute :—

“Whether the action of the management of All India Radio, Jabalpur (M.P.) in terminating the services of Shri P. K. Patel, Clerk Gr. II with effect from 1-3-1984 is justified? If not, to what relief is the workman concerned entitled?”

2. Facts which are no longer in dispute are that the workman, Shri P. K. Patel, was appointed as Clerk Grade II with effect from 1-3-1984 by the management of All India Radio, Jabalpur, in a leave vacancy in the pay scale of Rs. 260-400 and other allowances admissible from time to time. His basic pay was Rs. 260 p.m. The workman continuously worked from 21-3-83 to 21-2-1984 without any break in service. Thus he had qualified continuous service for more than 240 days in a year preceding the date of termination, but he was neither given any notice or pay in lieu of notice or retrenchment compensation in accordance with S. 25-F of the I.D. Act (hereinafter referred to as the Act). His termination was also not for any misconduct but it was only a termination simpliciter (Ex. M/2).

3. The case of the workman is that his employment was through Employment Exchange after interview of the various candidates and other formalities. The workman is trained typist and possesses necessary qualification and his superiors were pleased with his work as is apparent from the certificate dated 1st March, 1984. After his termination management has appointed another person for doing the same work. As such his termination is discriminatory, arbitrary and in contravention of the provisions of the I.D. Act.

4. On the other hand, case of the management is that the workman was appointed on ad hoc basis on leave vacancy temporarily. Therefore he acquired no vested right in the post. At the time of appointment it was made clear to him that his appointment is merely for the duration of leave vacancy. It was merely because the regular candidate had not joined therefore the petitioner was allowed to continue till 29-2-1984.

5. All India Radio, Jabalpur is not an industry and the applicant is not a workman for the purpose of the I.D. Act. All India Radio is not indulging in business activities and its function is covered under the sovereign functions of the State. Therefore the provisions of the I.D. Act do not apply to him.

6. I will first take up the objection of the management that the All India Radio is not an industry and the applicant is not a workman for the purpose of I.D. Act, if at all his service are governed by C.C.S. (C.C.A.) Rule.

7. In this regard both the parties have relied on the case of Bangalore Water Supply and Sewerage Board Vs. A. Raiappa and others (AIR 1978 SC 548) wherein what constitute an industry has been exhaustively considered by the Hon'ble Supreme Court and it has been held :—

“(a) where (i) systematic activity (ii) organised by co-operation between employer and employees (the direct and substantial element is commercial); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large-scale of prasad or food) prima facie there is an industry in that enterprise.

(b) Absence of profit-motive or gainful objective is irrelevant be the venture in the public, joint or private or other sector,



(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking."

It further held that the sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the Government or statutory bodies. It was also held that even in such departments if there are units which are industries and they are substantially severable then they can be considered to come within the meaning of Sec. 2(j). While laying down dominant nature test their Lordships of the Hon'ble Supreme Court further observed that where complex activities are carried on, some of which may qualify for exemption, other not, involves employees of the total undertaking, the predominant nature of the services and the integrated nature of the departments will be the true test.

8. Therefore proceeding further I will examine whether the activities of the All India Radio, Jabalpur are such as to fall within the ambit of the I. D. Act or not. In view of the observations made in the case of Bangalore Water Supply Sewerage Board (supra).

9 In order to prove his contention the workman, Shri P. K. Patel has given his own statement and on behalf of the management Station Engineer, Shri S.L.H. Rizvi (MW 1) and Station Director, Shri G. H. Waghala (M.W. 2) have been examined. The version of the workman is that All India Radio, Jabalpur earns through the announcing advertisements. On the other hand, the version of Shri Rizvi and Shri Waghala supported by their certificates Ex. M/3, Ex. M/4 and Ex. M/5 are that All India Radio, Jabalpur has taken up commercial activities from 1st May, 1985. Before that it was only giving information to the public and advancing their educational and cultural outlook and educating the rural people. It is also not profit oriented but to my mind all this is irrelevant. Firstly as has been held in the case of Bangalore Water and Supply Co. (supra) "absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking." Secondly the activities of particular undertaking as a whole has to be taken into consideration and not of its particular branch at a particular station. From the evidence adduced by the management it is apparent that Jabalpur Branch is part of All India Radio and is working under the Ministry of Broadcasting. In other parts of the country All India Radio was commercial even before the relevant date i.e. the date of termination of the workman. Shri Waghala has also admitted in his cross-examination that he is unable to say when commercial broadcasting started throughout in the All India Radio. According to him there is a section in the Ministry of Broadcasting called 'Commercial Broadcasting Service'. From this it is clear that All India Radio or a section of it is undertaking commercial activities, but this as I have already pointed out is irrelevant because as laid down in the case of Bangalore Water Supply and Sewerage (supra) absence of profit making is irrelevant. The true focus is functional and the decisive test is the nature of activities which has special emphasis of the employer and employee relationship. This Tribunal had earlier vide its award dated 18-12-85 had taken the similar view in the case of management of Aeronautical Communication Station, Civil Aerodrome, Jabalpur which was subsequently upheld by the Hon'ble High Court vide its order dated 2-4-86 in M.P. No. 1102/86. In a similar case of the All India Radio, Chattrpur Vs. Presiding Officer, GIT/LC, Jabalpur Hon'ble High Court in MP No. 1183/82 had relying on the Bangalore Water Supply Co. case (supra) and Full Bench decision of Bihar High Court in Bijoy Kumar Vs. State of Bihar (1983 (2) Lab. I.C. 1884) held :-

"that if there are enactment or rules framed under Article 309 of the Constitution which either expressly or by necessary implication excludes the operation of the Industrial Disputes Act, no question of applicability of the provisions of the Act arises. The mere fact that there is a Service Code dealing with some of the aspects of the employer-employee relationship between the Government and its employees does not amount by necessary implication to the exclusion of the provisions of the Act to Government department. Therefore, it is clear that employees of the All India Radio came within the definition of the word industry as defined in section 2(j) of the Industrial Disputes Act, 1947."

This clearly over rules the objection of the management that it is not an industry and it is not covered by the provisions of the I. D. Act.

10. Second ground on which the management is trying to take shelter is that the workman was appointed temporary in a leave vacancy. Therefore he does not acquire any status to the protection of the provisions of S. 25B and S. 25-F of the I. D. Act and his termination does not amount to retrenchment within the meaning of S. 2(oo) of the I.D. Act. The word 'retrenchment' has been defined in S. 2(oo) of the Act as under :-

"Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :-

- (a) voluntary retirement of the workman ; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continuous ill-health."

This contention stands repelled by the pronouncement of Supreme Court in the case of State Bank of India Vs. N. Sunderamoney (AIR 1976 SC 1111) wherein it has been held that the termination for any reason whatsoever in Sec. 2(oo) are the key words. Whatever the reason, every termination spells retrenchment otherwise than by way of punishment inflicted by the disciplinary action. Therein it has been further held that if the worker swims into the harbour of Sec. 25F he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B(2) of the Act. Same view was expressed in the case of Hindustan Steel Ltd. Vs. State of Orissa and Ors. (1977-1-LLJ p. 1). In the case of Robert D'Souza Vs. The Executive Engineer, Southern Railway and another (AIR 1982 SC 854) the protection of S. 2(oo) was afforded even to casual and seasonal labourers who had acquired the status of temporary railway servant. Similar views were taken in the case of Karnataka State Road Transport Corporation, Bangalore Vs. H. Boraiah (AIR 1983 SC 1320) and Factory Manager, Central India Machinery Mfg. Co. Ltd. Gwalior and other Vs. Naresh Chandra Saxena (1985 LIC p. 941)

11. Thus in view of the above authorities the plea of the management regarding the terms on which he was employed do not advance the cause of the management any further specially looking to the facts that witnesses of the management are unable to state as to who was the employee in whose leave vacancy he was appointed. The management is also unable to refute in their pleading or the evidence that no one was appointed after his termination. In the absence of any positive evidence in this regard to the act of the management amounts to unfair labour practice. In any case, his termination for any reason whatsoever amounts to retrenchment and failure to give notice or wages in lieu thereof and failure to pay retrenchment compensation (which is admitted fact) renders the retrenchment void ab-initio. I therefore hold that the workman is entitled to be reinstated and in the absence of any reason in the normal



course the workman is also entitled to have his full back wages with all ancillary benefits. Consequently I answer the reference as under :—

That the action of the management of M India Radio, Jabalpur (M.P.) in terminating the services of Shri P. K. Patel, Clerk, Gr. II with effect from 1-3-1984 is unjustified. He is entitled to be reinstated with full back wages and continuity of service and all consequential benefits with effect from 1-3-1984. No order as to costs.

V. S. YADAV, Presiding Officer

[No. I-42012/49/85-D.II(B)]

का.आ. 821—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार जनरल मैनेजर, एस.पी.एम., होशंगाबाद के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुसूचन में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

S.O. 821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of General Manager, SPM, Hoshangabad and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(28)/1987

#### PARTIES :

Employers in relation to the General Manager, Security Paper Mill, Hoshangabad (M.P.) and their workman, Shri S. C. Nivasarkar, Sainik Building, Near Home Guard Office, Hoshangabad.

#### APPEARANCES :

For workman—Shri P. S. Nair, Advocate.

For management—Shri R. C. Shrivastava, Advocate

INDUSTRY : Security Paper Mill DISTRICT : Hoshangabad (M.P.)

#### AWARD

Dated : 16-11-1988

This is a reference made by the Central Government in the Ministry of Labour vide Notification No. L-42012/58/85-D.II(B) Dated 30th March, 1987 for adjudication of the following dispute:—

“Whether the action of the management of General Manager, SPM, Hoshangabad in dismissing Shri S. C. Nivasarkar w.e.f. 18-7-1983 is justified or not? If not, to what relief the concerned workman is entitled to and from what date ?

2. The admitted facts are that the workman Shri S. C. Nivasarkar joined the services of the Security Paper Mill in 1966 as L.D.C. He was subsequently promoted as Assistant Store Keeper in 1967 and thereafter promoted as Head Clerk in 1973 and then as a Store Keeper in 1980. At the relevant time the workman was working as Store Keeper. The Security Paper Mill Hoshangabad is an industrial unit directly owned by the Government of India, Ministry of Finance, New Delhi.

3. It is a common ground that the workman, Shri Nivasarkar was issued a charge-sheet imputing the charges that he failed to receive and record the correct quantity of Caustic Soda Lye received by Road Transports and also over payment

of freight to the transporters. Two charge-sheets dated 8-2-82 and 20-4-82 were issued on the same ground but for a different period. In response to the above charge-sheets workman submitted his replies dated 4-3-82 and 10-5-82. As the two charge-sheets stated above has caused huge loss to the Government it was considered necessary that the enquiry should be conducted by a senior officer of the Government of India outside the Security Paper Mill and accordingly Shri T. K. Ramaswamy, Senior Engineer, Bank Note Press, Dewas was entrusted to conduct both the enquiries and Shri R. R. Rao, Deputy Works Manager was appointed as Presiding Officer. The workman was issued a show cause notice and was directed by the Enquiry Officer to appear before him on 9-10-1982 in the Guest House of Security Paper Mill, Hoshangabad. He was also asked to intimate the name of his defence assistant if he desires to appoint any and in case he appoints a legal practitioner then he should also file the permission of the department in this regard. This was received by the workman on 9-10-1982. At the enquiry the workman accepted the charges and pleaded guilty of both the charge-sheets. The Enquiry Officer after conducting the enquiry submitted his reports dated 30-4-1983 that the charges are proved against the workman and he has violated Rule 3(i)(ii) and Rule 3(i)(iii) of the Central Civil Service (Conduct) Rules, 1964. The Disciplinary Authority thereafter issued a notice to show cause on 30-5-1983 against the proposed punishment. The workman submitted his reply to the show cause notice on 20-6-1983. The Disciplinary Authority after considering his reply awarded the punishment of removal from service with effect from 18th July, 1983. The workman preferred an appeal against this order to the Director General Mints and Process, Ministry of Finance, Government of India, New Delhi. The Appellate Authority considered the Appeal and held that there was no ground to interfere with the order of Disciplinary Authority. As the Government has been put to a loss of Rs. 2,41,525.30, as per order dated 24-1-1984 and corrigendum dated 11th July 1984. I framed the issue which with my reasons and findings are as under—

#### ISSUE

1. Whether the domestic/departmental enquiry is proper and legal?
2. Whether the punishment awarded is proper and legal?
3. Whether the management is entitled to lead evidence before this Tribunal ?
4. Whether the termination/action taken against the workman is justified on the facts of the case?
5. Relief and costs?

#### Findings:—

4. I have heard parties on preliminary issues and gone through the record of enquiry. Learned Counsel, Shri P. S. Nair, has challenged the domestic enquiry on various grounds. I will take up the grounds one by one.

5. Firstly it has been contended that there is no basis to issue the charge-sheets and the charge-sheets were vague. The same did not disclose the quantum of the loss. In this regard I find that the workman was issued two Memos by the General Manager on 8-2-82 and 20-4-82 respectively Ex. M/1 and Ex. M/6 which contain statement of articles of charges and statement of imputation of misconduct which were as under:—

“Charge-sheet dated 8-2-82

He has violated Rule 3(i)(ii) and Rule 3(i)(iii) of Central Civil Service (Conduct) Rules 1964 while functioning as Store Keeper.

#### Imputation:—

While functioning as Store Keeper from 16-4-1980 to 31-3-1981 Shri S. C. Nivasarkar, Store Keeper failed to receive and record the correct quantity of caustic soda lye received by road transport resulting in loss of over 21000 gallons (over 95,500 litres) of caustic soda lye as shown in the attached statement and also over payment of freight to the transporters”.

Charge-sheet dated 20-4-82:—

"He has violated Rule 3(i)(ii) and Rule 3(i)(iii) of the Central Civil Services (Conduct) Rules, 1964 while functioning as Store Keeper in the matter of receipts, issues and accounting of materials in stores section.

Imputation :—

While functioning as Store Keeper, Shri S. C. Nivasarkar failed to receive and record the correct quantity of caustic soda lye received by road transport on the dates shown in the enclosed statement with reference to suppliers bills, gate passes and transport receipts. On the contrary in G.R.V. he had certified the quantity of the caustic soda lye in terms of M.T. as appearing in the suppliers bill to have been received for the purpose of payment by the Accounts Section though the same does not represent the correct quantity as compared to the actual volume of the caustic soda lye received in gallons. As a result of his misconduct the Government suffered a loss to the extent of value of 2,966 gallons of caustic soda lye apart from the loss due to over payment of freight to the transporter for the above quantity.

The above misconducts tantamounts to utter lack of devotion to duty and acts unbecoming of a government servant."

From the above it is crystal clear the allegations that the charges were vague and did not give the quantum of loss occasioned to the Government is not correct. In fact, in the Annexure Ex. M/4 and Ex. M/9 the details of the items were given i.e. the date of the receipt of the caustic soda lye as per loader G.R.V. No. quantity as per bill and GRV in Metric Tonnes and Gallons. The quantity mentioned in the store ledger and the shortage. This goes to show that the workman was furnished with all the requisite information to understand the charges, the imputations and details of the misconduct of which he was charged. For this reason also it cannot be said that there was no basis to issue the charge-sheets and there was no finding to show the actual loss caused to the Government. As such the case of Sawai Singh Vs. State of Rajasthan (AIR 1986 SC 995) does not come to the rescue of the workman.

6. Next it has been contended that the workman was not supplied with the relevant documents, statement of witnesses, the copy of the report of the preliminary enquiry before the commencement of the enquiry. In fact, the workman has applied for the same before this Tribunal vide application dated 12-8-1987 but the management has not supplied to him on the ground that the same are irrelevant. On perusal of the record I find that the workman was supplied with the list of documents by which the articles of charge are proposed to be sustained (See Ex. M/3 and Ex. M/8) as far as list of witnesses in Ex. M/3A it was mentioned that no witnesses are to be examined and in Ex. M-8A (Annexure-IV) it was mentioned that Shri R. K. Mangwani Chief Engineer in the proposed witness. Record nowhere goes to show that the workman ever demanded the copy of the statement of witnesses recorded if any, during preliminary enquiry. Workman in his written statement of claim has mentioned that the preliminary enquiry report was in his favour. He has also not asserted that any witnesses were examined during the preliminary enquiry. In the circumstances if the copies of the statement of witnesses and the preliminary enquiry report if any were not supplied to him it cannot be said that he was deprived of an opportunity to defend himself or any principles of natural justice has been violated. Learned Counsel for the workman in this regard has relied on case of Kashinath Dixit Vs. Union of India (AIR 1986 SC 2118). It clearly lays down that non-supply of documents-Government failed to show that no prejudice occasioned to employee—order of dismissal held violative of Art. 311(2). In the instant case I am of the opinion that it is a case of admission of charges and looking to the reply to the show cause notice Ex. M/4, Ex. M/5 dated 20-4-82 and 20-4-82, it is apparent that no prejudice has been occasioned to the workman.

7. In his pleading the workman has made certain allegations against one and all i.e. the Enquiry Officer, the Disciplinary Authority and even the Ministry of Labour. But the record of enquiry nowhere discloses that he had made any such grievance in his reply to the show cause notices during enquiry. Therefore it appears to be an after thought and no reliance can be placed on his bad assertion and allegations without any record. Simply because in some newspaper there was news item regarding the Chief Minister, Shri Basu Majumdar regarding his resignation and his sympathetic letter to the workman it does not mean that the workman was innocent. None of these documents are in any case proved by adducing proper evidence.

8. Next it has been contended that it was merely a preliminary enquiry and he was also told so by the Enquiry Officer and he and the Disciplinary Authority misrepresented and trapped him into admitting the charges. I find that this allegation is also baseless. In fact, in page no. 5 of his pleading he himself taken inconsistent plea in this regard. Firstly he stated that his signatures were obtained under misrepresentation and he was deceived. In the next breath he says that the charges were never explained to him. Thereafter he asserts that he did not understand the implication of the question and answer and accepted the same on total representation. In the next breath he again asserts that the applicant was trapped to sign papers with a deimne understanding and promise that no action would be taken against him. This changing defence at every steps itself goes to show the falsity of the defence. I have perused the record of enquiry and Ex. M/13 and Ex. M/14 which are admission of pleading guilty by the workman which to show that both the charges dated 8-2-1982 and 20-4-82 were read over to him and his plea of guilty was recorded on 9-10-82. Simply because these documents go to show that it was a preliminary hearing that it does not mean that it was a preliminary enquiry. The plea of the workman himself is that preliminary enquiry was conducted before in which he was not found guilty. Therefore his plea that it was merely a preliminary enquiry and therefore he could not have been found guilty in such an enquiry is worthless. It was a proper D.E. As I have already pointed out the record shows that the show cause notice, charge-sheets, imputation of charges were furnished to the workman and to which he had already replied before the Enquiry Officer was appointed and domestic enquiry was held by him.

9. Next it has been contended that the findings of the Enquiry Officer are perverse. The Enquiry Officer did not act on the admission to hold the workman guilty but also considered the various documents behind the back of the workman. None of the papers relied on by the Enquiry Officer were available before him and the findings are beyond the charge-sheets. The same are based on presumption and assumption and without the application of his mind. The same was done by the Disciplinary and Appellate Authority without considering the system of factory regarding the procedure for receipt and the defective tankers of the caustic soda. I have gone through both the enquiry reports (Ex. M/15 and Ex. M/17), the relevant portion of which is as under :—

"In the preliminary hearing Shri S. C. Nivasarkar Store Keeper has accepted the charges and pleaded guilty for the same. In his reply to the Memo No. S. 10/Link/11959 dated 8-2-1982, also he has mentioned that he had never supervised the decanting of caustic personally. He has also mentioned that the GRV was never checked with ledger by him personally."

This is the admission by him even in his reply to show cause notice dated 8-2-82 (Ex. M/5). Therefore to say that he was misrepresented, trapped or was given some assurance for making this admission cannot be accepted as true. He was found guilty on his admission of guilt, therefore there is no question of any finding being perverse. As far the contention that the Enquiry Officer considered various documents behind his back it will suffice to say that what the Enquiry Officer has done is that first he found the workman guilty on his admission of guilt. Thereafter he also

considered the documents on record and stated that these documents also go to show that the misconduct is proved. There is nothing wrong in such a procedure and it cannot be said that it is against the principle of natural justice to refer the document in support of his finding which is already proved on the admission of guilt.

10. In the circumstances the allegation that the Enquiry Officer, the Disciplinary Authority and the Appellate Authority acted mechanically without application of mind is devoid of any substance.

11. Lastly the punishment awarded has been challenged on the ground that it is disproportionate to the alleged misconduct. In his report the Enquiry Officer has mentioned the quantum of loss in gallons, metric tonnes and the amount. The Appellate Authority has also considered the same and mentioned in the corrigendum dated 1-7-84 (Ex. M[24]) that it has occasioned the loss to Government of Rs. 2,41,525.30. Looking to the quantum of loss and the carelessness and negligence of the workman it cannot be said that the punishment of removal awarded to him is excessive and disproportionate to the alleged misconduct.

12. For the reasons discussed above I find that the domestic enquiry is proper and legal and the punishment awarded to him is also legal and proper. The removal is also justified on the facts of the case. In the circumstances there is no occasion for any party to give an opportunity to lead evidence before this Tribunal. The workman is not entitled to any relief or costs. Consequently I answer the reference as under :—

That the action of the management of General Manager, SPM, Hoshangabad in dismissing (removing) Shri S. C. Nivasarkar w.e.f. 18-7-1983 is justified. He is not entitled to any relief. No order as to costs.

V.S. YADAV, Presiding Officer

[No. L-42012/58/85-D.II(B)]

का.आ. 822—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्डिनेन्स फैक्ट्री, खामरिया, जबलपुर (म.प्र.) के प्रबन्धालय से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद से केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

S.O. 822.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Ordnance Factory, Khamaria, Jabalpur (M.P.) and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC(R)(40)/1985

#### PARTIES :

Employers in relation to the management of Ordnance Factory, Khamaria, Jabalpur and their workman, Shri Daddilal, T. No. F-1/69/53082, House No. 3715, Kanchghar Jandha Chowk, Jabalpur (M.P.)

#### APPEARANCES :

For Workman—Shri S. K. Rao, Advocate.

For Management—Shri A. K. Chaube, Advocate.

INDUSTRY : Ordnance Factory DISTRICT : Jabalpur  
(M.P.)

#### AWARD

Dated, the 27th December, 1988

By Notification No. L-14012(9)/84-D.II (B) dated 21st May, 1985 the Central Government in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication :—

“Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur (M.P.) in dismissing Shri Daddilal, T. No. F-1/69/53082 with effect from 3-5-84 is justified? If not, to what relief the workman concerned is entitled to?”

2. The non-controversial facts of the case are that Shri Daddilal, workman concerned, was working in F-1 Section of Ordnance Factory Khamaria, District Jabalpur. That on 25-12-1982 he went to A-8 Section without permission of competent authority and sat on a box near Contact Milling Machine. Some workers caught him for alleged theft of brass components on a piece of cloth. For the alleged thefts/Shri Mutruswamy (A-8/54), M. H. Phadaki, Supervision Section, Roop Singh (A-8/79), Arodiya (A-8/237) and N. S. Thakur, Chargeman/F. 1, gave statement in writing on 25-12-1982. The delinquent workman, Shri Daddilal, also gave his statement in writing. The then Foreman, A-8 section also gave a written report. The workman was thereafter served with a Memorandum of Chargesheet No. 1225/Vig. 349 dated 17-1-1983 by Shri S. N. Patil, Works Manager/A on the following allegations :—

#### Article—1/Annexure I

“That the said Shri Daddilal T. No. F-1/69 while functioning as Millwright ‘B’ during the period 17-82 is alleged to have committed gross misconduct viz. :

- (i) Unauthorised entry inside production shop
- (ii) Unauthorised possession of Government property
- (iii) Attempted theft of Government property and
- (iv) Conduct unbecoming of a Government servant.

#### ANNEXURE II

Statement of imputations of misconduct or misbehaviour in support of the articles of charge/s against Shri Daddilal O.F.K. T. No. F1/69 Designation Millwright ‘B’—

The following imputations will cover all the articles of charges listed in Annexure I hereto :—

On 25-12-82, Shri Daddilal, OFK, T. No. F-1/69 was detailed for duty from 0730 hrs. to 1745 hrs. in F-1 Section. It is alleged that at about 0935 hrs. the said Shri Daddilal, OFK, T. No. F-1/69 had entered A-8 Section without permission of competent authorities. It is further alleged that he went near the Contact milling machine and sat on a box kept near the machine and collected some brass components on a piece of cloth viz. Contact (Government property) from a box (Dibba) kept on the machine in which the above said components are made and he was caught red handed by some A-8 Section workers. When questioned by the workers of A-8 as to what he was doing the said Shri Daddilal T. No. F-1/69 is alleged to have run away from the place after throwing the brass components on the shop floor when he was surrounded by the Section workmen. The said Components were weighed/sealed in the presence of O.O. on duty, Shri Daddilal and Section representative when it was found to be weighing 1 kg. 807 Grams. Shri Daddilal, T. No. F-1/69 was not authorised to keep the said material in his possession and it is alleged that he was attempting to take out the same for his personal gains. The charges are based on SO's Memo No. 2213/SO, dated 27-12-1982 (Extract enclosed)

Security Officer memo No. 2213/SO dated 27-12-82.

On 25-12-82 at about 0935 hrs. it was reported by F/M A-8 Section that one man has unauthorisedly entered in the A-8 Section and tried to pilfer brass components and he has been caught red handed by the workers. The undersigned and the security staff visited the section and one man along with brass components were handed to the security staff by F/M, A-8 who was allegedly attempted the brass components from the section. The individual along with the material were brought and produced before the orderly Officer. The individual was identified as Shri Daddilal, F-1/69/53082.

The statement of Shri Daddilal, F-1/69 was obtained in the presence of 0.0 his section representative and the signatures of the concerned were obtained on the same. The confiscated material was eight and found to be 1 kg. 807 Grams and same has also been sealed in the presence of 0.0 Shri Daddilal and his section representative and the signatures of the concerned were obtained on the sealed packet."

Thereafter a Court of enquiry was held by Shri D. M. Gupta, Works Manager. He submitted his domestic enquiry report dated 6-3-1984. The General Manager, Shri V. M. Bhandarkar, vide his Order No. 1225/Vig/349 dated 3-5-1984 imposed the penalty of dismissed from service on Shri Daddilal OFK. T. No. F-1/69/52082 with effect from 3-5-1984 (A.N.).

3. The case of the workman further is that he denied the charges levelled against him as he was maliciously implicated with the said charges based on union activities. The applicant was working in F-1 section and going to F-8 section does not arise. It is contended by the applicant workman that on the date of the incidence it was X-Mas day and he had gone there to greet his friends at A-8 section. The prosecution witnesses are not reliable at all as they were all management man. That during the enquiry proceedings the applicant was not given full and fair opportunity to contest his case. Even he has not been supplied the copy of the complaint and other relevant and basic documents on which the management relied. The Enquiry Officer did not give him opportunity to cross-examine the management witnesses. Enquiry Officer only noted the evidence deposed by the management witnesses. The main eye witness Shri Muthuswami who alleged first caught the workman denied straight way in the enquiry about any such theft. The Enquiry Officer in his brief dated 6-3-1984 has simply assumed that Shri Muthuswami might have caught the applicant. That no material has been removed by the authority from the possession of the applicant. That there is no pass system to enter to A-8 Section. Any employee of the ordinance Factory Khamaria can enter into the said section. So there is no occasion for the said charge at all. The workman has not been given the copies proceedings of the enquiry till date. The non-supply of enquiry proceedings to the delinquent official is against the CCS/CCA rule 1965. For all the above reasons the dismissal of the services of Shri Daddilal is illegal and void and he is entitled to be reinstated with full back wages.

4. The case of the management further is that in order to find out whether the applicant has got any Government material/unauthorised material collected and kept in his personal custody, the locker of the applicant/party No. 1 in the section was searched by the security staff in presence of orderly officer and a staff member where 4 Nos. of keys were recovered from his locker and two master key were also recovered which obviously had some mala fide intentions. The action of the applicant creates a suspicion that he had attempted to pilfer the Government material by entering the production section engaged in production of components of defence stores. He was also suspended with effect from 4-3-79 to 7-9-1979 for theft of Government property and on finalisation of the disciplinary action, penalty of reduction in pay was imposed. It is contended on behalf of the management that there is no violation of either Central Service Rules or any other statutory provision of law and therefore the workman has no case in his favour. A Court of enquiry into the charges was conducted wherein full opportunity was given to the workman to defend his case. The enquiry has been done strictly in accordance with rules and procedure. The Disciplinary authority having accepted the findings, being a case of serious nature, and his continued retention in Government service was not considered desirable, imposed the penalty of removal from service of the applicant with effect from 3-5-1984. The applicant has not preferred any appeal against the order to the appellate authority. He is therefore not entitled to any relief.

5. I framed the following issues for determination of the dispute points which with my reasons and findings are as under :—

#### ISSUES

1. Whether the enquiry is proper and legal ?
2. If not, whether the termination of the workman is justified on facts of the case ?
3. Whether the punishment awarded is proper and legal ?
4. Relief and costs ?

Findings with reasons :—

6. Issue Nos. 1 to 4—Parties relied on documentary evidence and adduced no oral evidence. I have gone through the original enquiry files of the management. The delinquent workman denied all the charges before the Enquiry Officer.

7. The workman has challenged the enquiry conducted by the Enquiry Officer on the ground that he was not supplied the copy of the complaint and other relevant and material documents on which the management relied. He was not given an opportunity to cross-examine the management witnesses; the Enquiry Officer could not show the articles of the theft; he was not given the copy of proceedings of the enquiry till date. Therefore the non-supply of the enquiry proceedings to the delinquent official is against the CCS/CCA Rule 1965. It is argued on behalf of the workman that some alterations and omissions and commissions were made in the original documents. He has cited the example that on 2-2-1984 the statement of Shri Jeevanlal on behalf of the workman was recorded and the question No. 1 and 2 were asked by the Enquiry Officer but they were scored out in the original records. It is further argued that the cross-examination of Jeevan Lal was done by the Enquiry Officer, but it was altered, and shown as the questions put by the Presenting Officer. On these grounds the workman contends that the whole enquiry was improper, illegal and is liable to be vitiated.

8. On merit of the case, the workman contended that all the witnesses of the prosecution were working under the complainant who is also a Union Leader. Therefore they are not reliable witnesses. It is submitted that on the date of incidence the workman had gone to greet his friends at Section A8 for X-Mas (25-12-1982). Further Shri Muthuswami who allegedly first caught the workman denied straight away in the enquiry about any theft committed by the workman. No material was recovered by the authority from the possession of the workman. There is no pass system to enter to A-8 Sec. and any employee of the Ordinance Factory Khamaria could enter to the said Section. Therefore the order of dismissal is basically illegal and void and inoperative and violative of principles of natural justice. The Enquiry Officer in his brief dated 6-3-1984 has simply assumed that Shri Muthuswami might have caught the applicant, but the delinquent later on ran away and while running the component and piece of cloth must have fallen on the ground. Therefore the management has made out an imaginary story and nothing was proved against the applicant/workman. The findings of the Enquiry Officer are perverse as the evidence of the witnesses has not been properly appreciated. For the aforesaid reasons the penalty imposed on the workman dismissing him from service is illegal and unjustified and the workman is entitled to be reinstated with full back wages.

9. I will first take up whether the enquiry is fair and proper and the workman has been given full opportunity to defend the case. I have perused the original enquiry papers submitted by the management. The workman was issued Memorandum of Charge-sheet dated 17-1-1983. Along with the articles of charges he was supplied with the list of documents by which the enquiry was proposed to be sustained. He was also given a copy of the Security Officer Memo No. 2213/SO dated 27-12-1982 on which the charges are based. Therefore it cannot be said that he was not supplied with the copy of the complaint.

10. It is alleged that there are some alterations, omissions and commissions in the evidence of Jeevanlal. It is true that there are some cutlines in the evidence of Jeevanlal at page 18, Question nos. 1 and 2 written at page No. 18 of the enquiry proceedings have been scored

But the evidence of Jeevanlal goes to show that the same questions were put by the Presenting Officer at page 19. Therefore it cannot be assumed that the evidence was not properly recorded by the Enquiry Officer. Regarding the alteration of the word "Presenting" in place of "Enquiry" at page 19 in cross-examination of Shri Jeevanlal, it appears to be a slip of pen by the writer. Moreover there is nothing against the delinquent in question No. 1 and 2 put in cross-examination by the Presenting Officer. Regarding the non-supply of enquiry proceedings to the delinquent employee, the enquiry proceedings in original are before me. The record does not show that the delinquent employee ever asked either the management or the Enquiry Officer to supply the copies of the enquiry proceedings.

10. The record of Court of enquiry filed before this Tribunal goes to show that the Enquiry Officer examined six prosecution witnesses and recorded the statement of the delinquent workman, Jeevanlal and Badri Prasad in support of defence. It appears that one of the material witnesses of management Shri A. K. Mukerji was first examined. Then he was allowed to be cross-examined by a friend of accused Shri S. C. Paras (at page 31) but he was allowed to be re-examined after his cross-examination by the Presenting Officer. This by itself goes to show that proper and legal procedure were not adopted in allowing the management's witnesses to be cross-examined by the Presenting Officer after defence. Thus the enquiry cannot said to be legal and proper and as per the principles of natural justice or as per even the C.C.S (C.C.A) Rules. However, for the sake of arguments even if I leave out this procedural mistake question arises whether there is legal evidence in support of the charges framed against the workman. I will, therefore, proceed to examine the enquiry report of the Enquiry Officer dated 6-3-1984.

11. I have gone through the pleadings of the management and I find that the management has nowhere pleaded seeking an opportunity from this Tribunal for permission to adduce evidence before this Tribunal in case the domestic enquiry is held to be vitiated for any reason by this Tribunal. I therefore proceed to decide all the issues and finally dispose of these proceedings.

12. Issues No. 1 to 4 :—I have perused the findings of the Enquiry Officer. The Enquiry Officer in his report first took up the defence plea and disbelieved it on the basis of his own knowledge or stray statements of prosecution witnesses. For example, see the first para of the defence taken by the accused. Learned enquiry Officer first referred to discrepancy of the accused and later pointed out 'Incidentally there is no pan vending Thela/Point in A-8 Section nor the accused could name any of his friend in the A-8 Section'. Regarding proof of unauthorised possession in para 2 learned enquiry Officer disbelieved it because according to him the accused could not name the man who had slapped him on the back. Similarly regarding attempted theft of Govt. property (para 3) the Enquiry Officer disbelieved it on the assumption that component and piece of cloth were thrown by the delinquent near the floor. For this there is hardly any legal evidence. Similarly regarding conduct in para 4 his plea is disbelieved simply because he failed to adduce any evidence in this regard. It is after coming to this conclusion that the learned Enquiry Officer proceeded to assess the evidence of the management. Thus it appears that after he had made sure that the defence plea is disbelieved he proceeded to examine the management's witnesses to say that the charges on all the four counts are proved. I thus find that the findings of the Enquiry Officer are also vitiated as being against principle of natural justice.

13. I have also gone through the evidence and I find that the findings of the Enquiry Officer on the evidence before him is not based on legal and proper appreciation of evidence.

14. I find that the statements of Shri M. H. Phadki, Shri Roop Singh and Shri A. K. Mukherji go to show that they were not eye witnesses to the incident. Shri Phadki had reached when the workman was alleged to have been in the custody of the staff of Section headed by Shri Muttuswamy. Therefore he was not an eye witness. This witness in answer to question No. 3 had stated that handkerchief in which articles of theft were found belonged to the accused but when shown the soiled packet he had to admit that

the cloth belonged to the Factory (as opposed to the findings that handkerchief is proved to be of the workman). Therefore even this circumstance is in favour of the accused. Next witness Shri A. K. Mukerji had admitted in his cross-examination itself that components were lying on the shop floor and scattered with the handkerchief and Daddilal was physically held by Shri Muttuswamy when he reached. Shri Mukerji thus belies the findings of the Enquiry Officer that the workman was found in possession of the articles of alleged theft. The witness Shri Roop Singh in the very beginning in his statement says that he did not see the accused committing theft. He denied the management's story that earlier also accused was seen coming to his Section and he was suspected. In fact, this witness admitted that when Shri Muttuswamy had caught him he was weeping. Next witness is Shri S. N. Thakur, Chageman of the Section of the accused. This witness only says that what he was told by his people about the keys that they belong to his section. This story is not relevant for the purpose of this case. Any way except for throwing mud on accused his statement does not appear to prove anything against the workman. Thus there remains the statement of Shri V. S. Arodiya and Shri Muttuswamy who are mutually exclusive. According to the management Shri Muttuswamy was the main witness who had caught the workman and the rest reached after him. Such a witness has not supported the management's story. Therefore the story told by Shri V.S. Arodiya hardly deserves any credence. In fact, the circumstances relied on by the prosecution and as proved during enquiry point out more towards his innocence than as to his guilty but the Enquiry Officer it appears, had predetermined to find him guilty as is apparent from his report. I therefore hold that the findings of the Enquiry Officer are contrary to the evidence on record and are therefore perverse and against the principle of natural justice. Consequently, the dismissal order dated 17-1-1983 based on the findings of the Enquiry Officer is also perverse improper and illegal. Therefore the order of disciplinary authority based on the findings of the Enquiry Officer is liable to be quashed as being illegal and improper and against the principle of natural justice.

15. However, the only thing proved against the workman appears to be that he was found in the other section in which he was not on duty without any specific permission. Thus during duty hours he was found not in place of his duty but in other Section.

16. Question arises whether the workman is entitled to be reinstated and if so from what date. In the instant case, admittedly the workman left his Section and entered the other Section while on duty without any authority. Therefore he deserves some punishment but the punishment of dismissal awarded to him for this minor negligence appears to be too excessive. To my mind, denial of back wages to the workman will be the sufficient punishment for this negligent act of misconduct. I therefore hold that though the workman is entitled to be reinstated with continuity of service from 3-5-84 but his conduct disentitles him to any back wages on reinstatement till the date of this award. Award is given accordingly. No order as to costs.

V. S. YADAV, Presiding Officer

[No. I-14012/9184 D.11(B)1]

का. धा. 823—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार अधिनियम 84 का पोस्ट धाकित, रायवड (म.प्र.) के प्रत्यक्ष में मजदूर नियोजकों और उनके कर्मचारियों के बीच, प्रत्यक्ष में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर, के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

SO 823.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in industrial dispute between the employers in relation to the management of Sundt. of Post Offices, Raigarh (MP.) and their workmen, which was received by the Central Government on the 27-3-1989.

## ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M. P.).

Case No. CGIT/LC(R)(89) of 1984

## PARTIES :

Employers in relation to the management of Post Master General, M. P. Circle, Raigarh Division, Raigarh M. P. and their workman, Shri Ramdutta Sharma S/o. Shri Rambhagar Sharma R/o Village Chandupura, Tah, Bhind, Distt, Bhind (M.P.).

## APPEARANCES :

For Workman.—Shri H. N. Upadhyaya, Advocate.

For Management.—Shri N. P. Mittal, Advocate.

INDUSTRY : Post & Telegraph DISTRICT : Raigarh (M.P.)

## AWARD

Dated 4-8-1988

By Notification No. I-40012(1)/84-D.II(B) dated 31st October, 1984 Government of India in the Ministry of Labour referred following dispute to this Tribunal, for adjudication :—

“Whether the Superintendent of Post Office, Raigarh M.P. is justified in terminating the services of Shri Ram Dutta Sharma, Temporary Clerk, with effect from 2-1-81 ? If not, to what relief is the concerned workman entitled ?”

2. It is a common ground that the applicant was selected for the post of clerk vide orders of the Post Master General, M P. Circle, Bhopal dated 6-2-1979 (P/1) and was allotted the Raigarh Division. Thereafter he was appointed to act as Learner Clerk at Kurasia Colliery vide Memo No. B2-14 dated 26-2-1979 of the Supdt. of Post Offices, Raigarh. The workman joined his duty as learner clerk on 28-2-1979 and remained there till 18-6-79.

Thereafter vide Memo dated 7-6-1979 he was asked to report at Postal Training Centre Badodara (Gujarat) where he reported for duty on 17-7-1979. He was declared successful in the training in the said School vide certificate dated 18-6-1979 (P/2). Thereafter the workman was given regular appointment on the post of clerk vide Memo dated 3-9-1979 (P/3) by the Superintendent of Post Offices, Raigarh Division and was posted at Manendragarh in Surguja District. The workman reported for duty and continued to work there till his services were terminated with effect from 2-1-1981 vide Memo dated 31-12-1980 (M/4). The workman submitted appeal to the Post Master General M.P. Circle, Bhopal with a copy to the Director General Post and Telegraph, New Delhi on 12-2-1981.

3. It is also admitted that the workman had filed a writ petition No. 1681/83 before High Court of Madhya Pradesh, Jabalpur on 19-6-1983 which was admitted and is still pending. Thereafter the A.I.C. (Central) sent failure report on the basis of which this reference has been made by the Ministry of Labour.

4. The case of the workman further is that he submitted reminders dated 12-2-1981, 18-3-1981, 25-4-1981 and 10-5-81 but without any result. However, one officer of the Bhopal Circle, Shri Kishori Lal visited and though he did not disclose the specific point regarding enquiry but he showed one mark-sheet of some Ram Auttar Sharma to whom the workman made it abundantly clear that Ram Auttar Sharma is some other person and his name is Ram Dutta Sharma. It appears that taking him to be Ram Auttar Sharma his services were terminated illegally. He approached the Post Master General, M.P. Circle, Bhopal on 19-11-1981 but no reply was given to him regarding his representation.

4. The applicant is a workman within the meaning of Sec. 2(s) and the Post and Telegraph Department is an industry within the meaning of Sec. 2(j) of the I.D. Act. on the date of his termination he has remained in continuous service for more than one year for the purpose of Sec. 25B of I.D. Act as he had completed more than 240 days service in the preceding calendar year. He was therefore entitled to retrenchment compensation which he has not been paid. Therefore the management has violated the provision of the I.D. Act.

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5. Further employees junior to him have been retained in service and even new hands have been employed in violation of Sec. 25G and H of the I.D. Act. His termination is therefore, mala fide and void ab initio.

6. The case of the management is that the services of the workman were terminated on 2-1-1981 under Rule 5 of the C.C.S. (Temporary Rules) 1965. His departmental appeal was forwarded to the Director General Post Offices. The sole ground on which the management has upheld their action is that Post & Telegraph Department is not an industry within the meaning of Sec. 2(j) and the applicant is not a workman within the meaning of Sec. 2(s) of the I.D. Act. The workman is governed by the C.C.S. (Temporary Service) Rules and not by the I.D. Act. He was therefore not paid any retrenchment compensation. The workman had filed a writ petition No. 1681/83 in the High Court of M.P. Jabalpur. The petitioner has suppressed this fact before this Tribunal hence this petition is not maintainable. The statutory appeal filed by the workman is yet pending, therefore also this case is not maintainable. If at all the Central Administrative Tribunal is the right forum.

7. Parties admitted the documents of each other and did not seek to adduce any oral evidence. I therefore heard parties and my findings on the points in dispute are as under.

8. The main defence of the management is that the Postal Department is not an industry and the applicant is not a workman within the meaning of I.D. Act. Therefore the provisions of the Industrial Disputes Act do not apply to the present case. He is governed by the provisions of C.C.S. (Temporary Services) Rules 1965 and not by the provisions of the Industrial Disputes Act, 1947.

9. In support of this contention reliance is placed on Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others (AIR 1978 SC 548) wherein what constitute an industry has been exhaustively considered by the Hon'ble Supreme Court and laid down certain dominant nature of tests to determine the same. It has also considered certain organisations and Governmental Departments in the light of sovereign functions of the State and laid down that “Court should, therefore, so far as possible, avoid formulating or adopting generalisations and hesitate to cast the mould which would not permit of expansion as and when necessity arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business (Page 594)”. From the above it is crystal clear that in the above authority Hon'ble Supreme Court has not specifically laid down that the postal department of the Government of India is not an ‘industry’. In 1984 (49) Indian Factory & Labour Reports p. 57; 1983 Lab. I.C.135(Ker); 1981 Lab. I.C.(NOC) 68-(Cal.) it has been laid down that the postal and telegraph department is an industry and full and part time employee of the postal department are workmen for the purpose of Industrial Disputes Act.

10. The second defence of the management is that the workman was a temporary government servant and his case was governed by the Rule 5 of C.C.S. (Temporary Services) Rules 1965. Therefore this Industrial Tribunal has no jurisdiction to decide this case under the I.D. Act.

10. In support of their case learned Counsel for the management though relied on various authorities but have not filed the same. But I find that most of the authorities relied on are regarding interpretation of C.C.S. (Temporary Services) Rules and on facts they do not apply to the present case. The question before me is not whether the case of the applicant was governed by the C.C.S. (Temporary Services) Rules but the crucial question is whether the provisions of the I.D. Act apply to the present case.

11. In the case of Mohan Lal Vs. Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253) question of termination of a temporary appointee was considered which was a case of the similar nature i.e. the appointment order says that the services would be terminated without notice and without any compensation in lieu of notice on either side. In that case it was held that assuming maximum in favour of the respondent that he was a temporary employee could terminate his services, even according to the respondent, not as and by way of punishment but a discharge of a temporary servant, constitute retrenchment within the



meaning of Section 2(00), is the core question, Section 2(00) reads as under:—

"2(00) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health.

It was further held that "Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself". Thus the words "for any reason whatsoever" are the key words and as such termination of the workman for any reason whatsoever except those exempted in the section itself will amount to retrenchment, as has also been held in the case of *State Bank of India Vs. N. Sundramoney* (AIR 1976 1111) wherein it has been further held that if the workman swims into the harbour of Section 25F he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B(2). Same view was expressed in the case of *Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa* (AIR 1977 SC 31). In the case of *Santosh Gupta Vs. State Bank of Patiala* (AIR 1980 SC p. 1219) which was a case of discharge of a workman on the ground that she did not pass the test which would enable her to be confirmed, it was held that she was retrenched within the meaning of S.2(00) and therefore the requirement of S. 25F of the Act had to be complied with. The case of *Robert D'Souza Vs. The Executive Engineer, Southern Railway and another* (AIR 1982 SC 854) the protection of S. 2(00) was afforded even to casual and seasonal labourers who had acquired the status of temporary railway servant. Similarly views were taken in the case of *Karnataka State Road Transport Corporation, Bangalore Vs. H. Boriah* (AIR 1983 SC p. 1320) and *Factory Manager, Central India Machinery Mfg. Co. Ltd. Gwalior and another Vs. Naresh Chandra Saxena* (1985 LIC p. 941).

12. It is not the case of the management that the services of the workman were terminated for any alleged misconduct on his part. However, the workman has pleaded which is not specifically denied that perhaps his services were terminated on mistaken identity. If that was the case, then at least the workman was entitled to a show cause notice or charge sheet and the procedure of domestic enquiry should have been followed which has not been done in the instant case. Rule 5 of the C.C.S. (Temporary Services) Rules which has been relied on by the learned Counsel for the management itself lays down that the services of temporary government servant who is not in quasi permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant. It is not the case of the management that any such notice was given. This is contrary to principles of natural justice. For the reasons discussed above, I am of the opinion that since the postal department is an industry and the applicant is a workman for the purpose of the I.D. Act and temporary employee of the postal department is governed by the provisions of the I.D. Act.

13. Once the case is covered by the provisions of I.D. Act question whether it is covered by the provisions of some other Act like Central Administrative Tribunal Act is immaterial and since the applicant is a workman within the meaning of S.2(s) of the I.D. Act being a clerk this case is well within the jurisdiction of this Tribunal.

14. Next objection of the management is that since the matter is pending in writ petition before the High Court, as such this case is not maintainable I am unable to

agree. Firstly Hon'ble High Court has not stayed these proceedings. Secondly the writ petition (copy Ex. M15) goes to show that the workman moved the High Court for writ of certiorari or mandamus or any other suitable writ for quashing his termination order and at the same time in the alternative he has prayed for a direction to be issued to the Respondent to refer the case to the Industrial Tribunal or Labour Court for adjudication. It is perhaps on account of this writ that the Asstt. Labour Commissioner and thereafter the Ministry of Labour referred the case to this Tribunal, for adjudication. Therefore in my humble opinion simply because the writ petition is pending the jurisdiction of this Tribunal is not taken away.

15. Coming to the case in hand I find that the services of the workman were terminated without assigning any reason vide order dated 31-12-1980 (Ex M14). Undoubtedly it was not for any misconduct and not in accordance with the procedure laid down for termination of services of a government servant. Section 25F of the I.D. Act therefore come into operation which reads as under:—

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of (continuous) service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette.)"

Admittedly the management has not paid the retrenchment compensation to the workman as required under S.25(b) of Act.

16. Management has not specifically in their pleading denied that the persons employed with the workman are still retained in service and the persons are appointed (though they are individual appointees) after him, this is in contravention of the provisions of S.25B and H of the I.D. Act. For both these reasons i.e. for contravention of S. 25F, G and H of the I.D. Act the termination of the workman is void ab initio.

17. Question arises as to what relief the workman is entitled. The facts of the case go to show that the services of the workman were terminated either on the whims of the departmental officer or for some imaginary reason. As a normal rule the workman is entitled to be reinstated with full back wages unless there are certain reasons disentitling him the same. In the instant case there is no circumstance allege or proved by the management. I am therefore of the opinion that the workman is entitled to reinstatement with full back wages and all other ancillary reliefs. I therefore answer the reference as under:—

That the Superintendent of Post Office, Raigarh, M. P. is not justified in terminating the services of Shri Ram Dutta Sharma Temporary Clerk, with effect from 2-1-1981. He is therefore entitled to be reinstated with full back wages and all ancillary relief No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-40012/1184-D.II(B)]



का.प्र. 824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारेण, केन्द्रीय सरकार जनरल मैनेजर सेंट्रल रेलवे, बम्बई के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-1989 को प्राप्त हुआ था।

S.O. 824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of General Manager, Central Railway, Bombay and their workmen, which was received by the Central Government on 27-3-1989.

### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(107)/1985

#### PARTIES :

Employers in relation to the management of General Manager Central Railway, Bombay and their workmen represented through the All India Station Master's Association, Jabalpur Division, Jabalpur (M.P.).

#### APPEARANCES :

For Workmen—Shri Rajendra Menon, Advocate and Shri Roha Arya, Advocate.

For Management—Shri S. K. Mishra, Advocate,  
INDUSTRY : Railways DISTRICT : Jabalpur (M.P.)

#### AWARD

Dated 1st December, 1989

By Notification No. L-41011(77)/83-D.II(B) dated 18-11-1985 the Central Government in the Ministry of Labour referred the following dispute to this Tribunal, for adjudications—

“Whether the demand of All India Station Masters Association, Jabalpur Division to repatriate Guards who were drafted upto July, 1978 in the ASM's Cadre contrary to the Railway Board's instructions of 1972 and to promote SMS and ASMs so affected with retrospective effect is justified? If so, to what relief are they entitled?”

2. The case of the workmen stated briefly is that in Railway there are several departments, cadres categories of employees like S.Ms., Guards, Ticket Collectors etc. The promotions are restricted within the cadre and one cadre is not permitted to be promoted in another. The Station Masters were divided into following cadres—

#### Recruitment Grade of A.S.M.—Rs. 330-560.

Asstt. Station Master	Rs. 425-700) By Seniority
Grade Station Master Grade	Rs. 425-640)
A.S.M. Grade	Rs. 455-700) By Selection
S.M. Grade	Rs. 455-700)
Dy. Station Supdt. Grade	Rs. 550-750) By seniority.
S.M. Grade	Rs. 550-750)
Station Supdt. Grade	Rs. 700-900 By selection
Station Supdt. Grade	Rs. 840-1040 By seniority.

The grades and promotion channels of the Guards were as under:—

Recruitment Grade Guard 'B' Gr.	330-560.
Guard 'A' Agrade	Gr. Rs. 425-600
	Passenger Guards (Seniority).
Guard 'A' Special	Rs. 425-640
	Mail/Express
	Guards (Selection)

The matter was clarified by order issued by the Railway Board dated 6th April, 1972, extract of which is reproduced below :

“(iii) Post of Station Masters and Assistant Station Masters upto and inclusive of grade Rs. 250-380(AS) should be exclusively preserved for promotion from Lower grades of Station Masters, Asstt. Station Masters. There will be no drafting of persons from Guards in lower grades. However, Traffic Apprentices should be appointed as S.M./A.S.M. in Grade Rs. 250-380 (As in accordance with the prescribed percentage).”

The Chief Personnel Officer, Central Railway by his letters dated 28-6-77 and 13-4-77 has further clarified this position. The other railways except the Central Railway have been following these instructions. The Central Railways, however, did not follow the same and permitted the following persons to get their names interpolated in the list of S.M./A.S.M. in the scale of Rs. 455-700 in violation of the orders of the Railway Board.

3. There is a machinery called the Permanent Negotiation Machinery (P.N.M.) for redressing the grievance of the workers. This machinery is, however, available only to the following two unions i.e. National Railway Mazdoor Union and National Railway Mazdoor Union. In spite of persistent and repeated efforts of the petitioners from 1976 to 1981 the matter was not discussed by the said unions with the Railway Administration probably because the Guards wielded bigger influence in the said Federations. Therefore, in the year 1981 the petitioner moved the Regional Labour Commissioner (Central) but he refused to conciliate. The petitioner, therefore, moved the High Court and on the direction of the Hon'ble High Court in the year 1985 this re-

ference has been made. Thus the A.S.M./S.Ms. have been victimised, subject to unfair labour practice and denial of their legitimate claim.

4. The case of the management is that the cadres of S.Ms./A.S.Ms. grade Rs. 455-700 (R.S.) is preserved exclusively for S.M./A.S.M. only. Guards are not to be inducted in this cadre. However, the Guards grade Rs. 330-560 (A.S.) and above can seek promotion to higher stationary post of Asstt. Yard Master/Yard Master Grade Rs. 425-700(AS). Both the cadres of S.Ms./A.S.Ms. and Y.M./A.Y.M. are merged into a single cadre at the stage of Rs. 550-750 (RS) and further promoted to the grade of Rs. 700-900 and Rs. 840-1040 and Group B post and so on as per the latest channel of promotion. There have been representation from the recognised trade union for inclusion of YMs/Guards Trains Inspector, Movement Inspectors and as such on these representations they were included in the channel of promotion vide letter dated 6-4-72 (Ex. W|1) and 5-7-73. There was some modification of the above letters and proposals were sent to the recognised unions. Their notes and proposals were approved and final orders relating to channel of promotion were issued on 3-5-1980. The interpretation put on the Railway Board's letter dated 6-4-72 is not correct. Vide letter dated 28-6-77 Chief Personnel Officer had clarified that till such time the revised channel is finalised or circulated for implementation the vacancies of S.Ms./A.S.Ms./A.Y.Ms. of grade Rs. 455-700 may be filled in accordance with the existing channel of promotion. After the issue of this letter the matter was finalised by Agreement between the management and the said recognised unions and the letter dated 3-5-1980 was issued fixing the percentage for drafting of persons of other departments in the grade of Rs. 455-700.

5. Each Railway have a separate administration and are bound by the directions and instructions issued by the Headquarters of that Railway. It is not correct that the said agreement arrived at is in violation of Railway Board's orders. The employees No. 1 to 8 while working as Guards got promotion to the S.Ms./Y.Ms./TNIs and Movement Inspectors. Their promotion was under the agreed channel of promotion. Since these two recognised unions were parties to the agreement the petitioners are bound by such agreement. There was no discrimination or unfair labour practice.

6. During the course of proceedings the interveners i.e. the All India Guards Council Jabalpur were also impleaded and their case briefly is that the channel of promotions of the categories were laid down and even the percentage of different categories was specified. Details of selection of candidate between 1972 to 1980 (Annexure A to the statement of claim) being filed which will go to show percentage of guards for selection for the post of A.Y.Ms./A.S.Ms., TNIs etc. This is genuine and being strictly followed in all the division of Central Railway, Bombay, Jhansi, Nagpur, Bhuswal and Sholapur etc. (Annexure B has been filed to show the actual position of selection between 1972-80). This

further confirms the position of quota fixed for different categories. The same principle of quota was adhered to and after 1976 the Guards were completely eliminated and were not considered for promotion. The various Annexures, C, C1, C2, C3, C4 are being filed to show representation of the Guards with their quota in various division of the Railway. The Guards heretofore made their representation in Jabalpur Division but without any result. Till 1976 20 per cent of Guards were promoted to higher grade in Jabalpur, but after 1976 not a single guards was called for selection. On 3-5-1980 the administration in consultation with both the recognised Unions finalised the channel of promotion in which the quota of guards was fixed at 45%. Station Masters, lower grade A.S.M. etc. were given 35% and the remaining 20% was fixed for Yard cadre. The Guards were never called for filling up the post of S.Ms./A.S.Ms. in the grade of Rs. 455-700 after 1978. They were only called for filling up the post of A.Y.Ms. according to the existing channel of promotion in the grade of Rs. 455-700.

7. Parties led no oral evidence. The petitioners had filed documents Ex. W|1 to Ex. W|17 which are admitted by the opposite parties. Parties have argued their case on the basis of these documents. I will briefly scrutinise the relevant documents.

8. Ex. W|1 is the material letter dated 6th April 1972 on which the petitioner based their claim. Ex. W|2 dated 9th May 1973 is the letter of Central Railway to the General Secretary of the Union. Ex. W|3 is the promotion list dated 16-9-66 along with the various representations of the petitioners. Ex. W|4 is the representation dated 13th May 1978 of the petitioner. Ex. W|5 is the letter of Chief Personnel Officer of Central Railway to the General Secretary to N.R.M.U. Ex. W|6 is the letter of Central Railway dated 29-6-1978. Ex. W|7 is the chart showing the revised channel of promotion of Traffic Staff. Ex. W|8 is the details of selection conducted for filling up the post of SM/ASMs from 1978 to 1980 with annexures for various divisions marked Ex. W|9, Ex. W|10, Ex. W|11, Ex. W|12.

9. Ex. W|13 and Ex. W|14 are the representations of Guards dated 15th May 1980. Ex. W|15 is copy of circular Ex. W|1. Ex. W|16 is the letter dated 28-6-77 of the Central Railway to D.S. (Railways) Jhansi. Ex. W|17 is the letter of Central Railway dated 3-5-1980 to D.R.Ms.

10. The crux of the matter is whether the instructions dated 6th April 1972 (Ex. W|1—Ex. W|15) of the Railway Board has been violated. I have already reproduced the relevant part of the letter in question. It says the "post of Station Masters and Assistant Station Masters upto and inclusive of Grade Rs. 250-380 (AS) should be exclusively preserved for promotion from Lower grades of Station Masters, Asstt. Station Masters. There will be no drafting of persons from the Guards in lower grades".

11. The case of the management and the Guards Council is that this order has not been violated since it was only meant for lower grade upto and inclusive of grade Rs. 250-380. On the other hand, the contention of the petitioner is that this order has been violated inasmuch as 8 persons from the cadre were not only absorbed in the A.S.M./S.Ms. cadre but they have been promoted. On behalf of the management, it has been pointed out that the Central Railway had issued certain directions in view of Board's letter dated 6-4-1972 vide letter dated 9th May 1973 (Ex. W|2) wherein it was specifically mentioned that the post of S.M./A.S.Ms. and inclusive of grade of Rs. 250-380 (AS) should be exclusively preserved for promotion for the lower grade S.Ms. and A.S.Ms. In this letter in para 3 & 4 channel of promotion now existing and revised channel of promotion Annexure A and B were laid down and in para 5 it was reiterated that consequent on the post of S.Ms./A.S.Ms. upto grade of Rs. 250-380 being exclusively utilised for promotion of S.Ms./A.S.Ms. for lower grade, the quota available to the different category serving in railway for the purposes of promotion to AYM had gone slight alteration. The existing and revised quota are indicated in Annexure B. Thereafter letter dated 13-4-77 (Ex. W|5) was issued stating that there are slight modification in letter dated 9-5-73 as a result of recommendation of Third Pay Commission and modified channel of promotion is herewith sent for consideration of the Union. In para 3 and Ex. W|5) it was mentioned—

"1. The proposed channel of promotion sent under this office letter no. even dated 9-5-73 has slightly modified as a result of recommendation of Third Pay Commission and modified channel of promotion of Transportation Staff together with note for channel of promotion is sent herewith.

2.....

3. If 'A' and 'B' Guards are not available to fill up the posts of AYMs etc. Gr. Rs. 250-380 (AS)/Rs. 455-700(RS) 'C' grade Guards will be considered for filling up the vacancies reserved for guards."

From the above, it is crystal clear that there was a quota for the Guards in the channel of promotion for AYM/YMs and had certain percentage fixed for the same. It is also clear that the Third Pay Commission recommendations came into force with effect from 1-1-1973 whereby certain grades were merged. The pay scale of Guard 'C' was Rs. 335-425. In this regard, it is pertinent to note that letter dated 6-4-72 (Ex. W|1) nowhere puts any restriction for drafting of guards as ASMs/S.Ms. in the higher grade of Rs. 335-425 and Rs. 450-575 and also as AYM/YM and Trained Inspectors in any grade including Rs. 250-380 and below. It is to be further noted that authorised scales of pay of SM/ASMs Rs. 250-380 and Rs. 335-425 have been merged in one single grade by the Third Pay Commission with effect from 1-1-1973 to Rs. 455-700. It is to be

further noted that the cadre of SM/ASM of Gr. Rs. 455-700 (revised) was preserved exclusively for CM/ASM. Guards were not to be induced in this cadre. However, Guards in the grade of Rs. 330-560 could see promotion to higher stationary post through AYM/YM in the grade of 455-700. Both these cadres of SMs and YMs were merged into single cadre at the stage of Rs. 550-750 and were open for further promotion in the grade of Rs. 700-900 and Rs. 840-1040. Thus in view of the changed brought about by the Third Pay Commission it became necessary to regroup the pool posts of various grades and channelise their promotion by fixing proportions. This was done as is borne out from the letter dated 23-6-1978 of the Central Railway (Ex. W|6). It says that it has been clarified that pending the finalisation of channel of promotion for the above post of S.Ms. upto grade of Rs. 250-380 and Rs. 455-700 will now be filled by ASM and there will be no drafting of Guards from lower Grades. This decision was taken by the joint meeting with the Union on 27-3-1978. Chart Ex. W|8 goes to show that 20% quota was fixed for AYM and it was in this category that certain percentage of guards were promoted from time to time. Ex. W|9 to Ex. W|12 also go to show that there are certain promotion from the guards group in this quota which is further borne out from the representation of the Guards dated 15-5-1980 (Ex. W|13) wherein they stated that we are working as AYM-STA vice vacancy and vice AYM while they are on leave or sick since last 2-3 years. In the letter dated 28-6-77 of the Central Railway Ex. W|16 it was stated that till such time the revised channel is finalised or circulated to the division for implementation of vacancy of SMs/ASMs/AYMs in the grade of Rs. 455-700 may be filled in according to existing channel of promotion. It was only vide letter dated 3-5-1980 (Ex. W|17) that the combined cadres of SMs/ASMs. AYMs in the grade of Rs. 425-640 were bifurcated and their ratio was fixed two as against one (2:1).

12. From the above, two things are clear. One is that the letter dated 6-1-1972 nowhere put any restriction for drafting the Guards as ASM/SMs in the higher grade. Secondly since the Third Pay Commission with effect from 1-1-1973 had merged two grades into one single grade it became necessary to refix their quota. Therefore to my mind in view of the merger of two grades it cannot be said that the order dated 6-1-1972 (Ex. W|1) has been violated.

13. In any case, now the position has changed further. Four of the Guards who were promoted viz. V. N. Hans Raj, J. P. Tiwari, Sheikh Baboo and S. S. Singh had retired respectively from 1-11-84, 1-7-83, 1-10-82 and 1-7-86. Therefore the vacancies which were blocked by them by now are open for promotion to the petitioners since the management has put restriction of drafting of Guards into ASMs/SMs Cadre from July, 1978.

14. As regards Shri H. C. Srivastava as the chart attached with the written arguments of the petitioner goes to show that he was Grade 'C' Guard and he was placed in the category of AYM in the pay scale of Rs. 455-700 on 26-9-74 which does not

contravene the said Board's letter. His subsequent promotion and posting as S. M. in the higher grade does not offend the above letter. Similarly Shri L. N. Sami was working as Guard 'C' and was drafted as AYM on 8-10-75 and subsequent posting and promotion to the post of ASM in the higher grade does not offend the said Board's letter. Shri S. J. Ahmad was working as Guard 'C' and was drafted to AYM post on 8-3-75 and subsequently promoted as ASM from 6-10-77 in the pay scale of Rs. 550-700. As regards Shri R. C. Nagrath who was working as Guard 'C' and was drafted as A.S.M. on 28-12-76, it is to be noted that Shri S. J. Ahmad and Shri R. C. Nagrath were no doubt drafted in the S. Ms. cadre. But this drafting of Shri Ahmad and Shri Nagrath was within the prescribed percentage fixed for the AYM and does not offend the Board's letter.

15. For the reasons discussed above, I am of the opinion that the act of the management cannot said to be unjustified since it was occasioned on account of changed circumstances by merger of two grades by the Third Pay Commission. I, therefore, answer the reference as under :—

That the demand of All India Station Masters Association, Jabalpur Division to repatriate Guards who were drafted upto July 1978 in the ASMs Cadre, contrary to the Railway Board's instructions of 1972 and to promote SMs and ASMs so affected with retrospective effect is unjustified. Therefore the petitioners are not entitled to promotion. The petitioners are therefore not entitled to any relief. No order as to costs.

[No. L-11011/77/83-D. II (B)]

V. S. YADAV, Presiding Officer.

का.प्र. 825. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सोनियर सुप्रिटेन्डेंट आफ पोस्ट आफिस, नागपुर सिटी डिवीजन, नागपुर के प्रबन्ध-तंत्र से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, प्रत्यक्ष में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार का 27-3-89 को प्राप्त हुआ था।

S.O. 825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur (M. P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Offices, Nagpur City Division, Nagpur and their workmen, which was received by the Central Government on the 27-3-1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC(R) (10) /1987

#### PARTIES :

Employers in relation to the management of Senior Supdt. of Post Offices, Nagpur City

Division, Nagpur and their workman Shri Purshotam Krishnaji Khuje, Daily Wages Postman, R/o Dhangadpura at Hingna Tah. & Post Hingna District Nagpur (M. S.)

#### APPEARANCES :

For Management .. Shri V. V. Vidwans, Advocate.

For Workman .. Shri V. N. Bagale, Advocate.

INDUSTRY : Post & Telegraphy DISTRICT : Nagpur (M.S.)

#### AWARD

Dated, the 20th January, 1989

The Central Government in the Ministry of Labour vide Notification No. L-40012/55/85-D.II(B) Dated 22nd January 1987 referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the management of City Head Office, Nagpur in terminating the services of Shri Purshotam Krishnaji Khuje, Daily Wages Postman with effect from 17-7-83 was legal and justified? If not, to what relief the workman is entitled to and from what date?"

2. The case of the workman is that as Scheduled Caste Community Member he had passed VIII Class and was registered in the Employment Exchange, Nagpur. The workman was employed as a Postman in the office of the Assistant Post Master (Delivery) in the Nagpur City Post Office and worked without any break honestly and to the satisfaction of his superiors. He worked as a Postman for total 158 days with effect from 10-9-1981 to 16-7-1983. However, without giving any reason or without complying with the provisions of the Industrial Disputes Act his services were terminated with effect from 16-7-1983.

3. The case of the management of the Postal Department is that the workman was engaged at Nagpur City Headquarters on daily wages as Group D official (Class IV) with effect from 10-9-1981 to 16-7-83 with frequent breaks in leave vacancy of regular Group D official. He had worked on daily wages as Postman only for four days i.e. on 11-9-82 and 13-9-82 to 15-9-82. However, as a Group D Employee he worked as follows as per annexure enclosed :—

In the year 1981	—	86 days.
In the year 1982	—	270 days.
In the year 1983	—	140 days.

He was never engaged in any capacity for more than six days in any spell continuously and on non-availability of regular and approved candidate. Workman was not engaged with effect from 17-7-83. The management further pleaded that the reference is void having been made without jurisdiction whatsoever. The workman was employed in leave vacancy. Therefore the question of complying with the provisions of the I. D. Act did not arise.

4. It is not disputed by the management that the workman was employed as Class IV employee with effect from 10-9-1981 to 16-7-1983 with frequent breaks in the leave vacancy of regular employee. However, as a Postman on daily wages he was employed only for four days as mentioned above.

5. Crucial point for determination is whether he was employed as a Postman on daily wages from 10-9-1981 to 16-7-1983 notwithstanding the alleged breaks asserted by the management.

6. In support of his case workman, Purshotam Khujje (W. W. 1) has given his own statement and relied on certain documents which do not appear to be relevant for the purpose for determination of this reference. However, in his own statement on oath he admitted that from 10-9-1981 he worked as a Peon and used to do loading and unloading of mail. As a Postman he only worked for some days otherwise he was working mainly as a Peon.

7. On the other hand, management has examined Shri Ramdas Wamanrao Ukre, the Inspector of Post and Telegraph Department of Nagpur City. On the basis of record he stated that from 10-9-1981 workman worked as a Class IV employee on daily wages against leave vacancy as per record Ex. M/1 and he only worked for four days as a Postman as per record Ex. M/2. Further in his cross-examination stated that the workman did not appear subsequently, therefore he was not employed in leave vacancy. Thus from the oral and documentary evidence Ex. M/1 and Ex. M/2 it is proved that the workman only worked for four days as Postman on daily wages and rest of the period from 10-9-81 to 16-7-83 he worked as a Class IV employee. I have already reproduced the Schedule to the reference above which says whether the workman worked on daily wages as Postman and his termination with effect from 17-7-83 as a Postman is legal and justified or not. The evidence of parties referred above only prove that he had worked only for four days as a Postman on daily wages in leave vacancy. This shows that his services were only contractual on daily wages in leave vacancy which came to an end on the leave vacancy as a Postman being now available. His services were therefore contractual and came to end by efflux of time. Four days service as a Postman from 11-9-82 to 15-9-82 even though deemed to be continuous does not entitle the workman to the benefit of Sec. 25F of the I. D. Act. Therefore he is not entitled to any relief on the ground of being a Postman Class III employee from 11-9-82 to 15-9-82.

8. It appears that the plea of the workman is that he mostly worked as a Class IV employee i. e. Peon. Admittedly from 10-9-1981 to 16-7-83 (with alleged frequent breaks). Therefore breaks notwithstanding the workman has swimed into the harbour of Sec. 25F read with Sec. 25B of the I D. Act. I am afraid this line of argument is beyond the scope of reference made to this Tribunal. It is now well settled that a Tribunal cannot allow the party to change the nature, complex or propriety of the dispute. It is not open to the Tribunal to enlarge the ambit or alter the character of dispute referred to it or widen the issued for decision and the field of enquiry including

evidence. It is also well settled that likewise the parties cannot be allowed to do so even though the terms of reference do not represent the real nature of dispute the scope of reference cannot be extended either by the Tribunal or by the parties by bringing the matters which are not subject matter of reference and which are not incidental to the dispute which has been referred. It is also now well settled and it is not open to the Industrial Tribunal to grant relief different than the demanded by the workman.

9. As already pointed out the reference was regarding his working as a Postman on daily wages in leave vacancy. Now the evidence led before me by the workman is regarding his working mostly as a Peon except for a few days as a Postman. His working as peon now cannot be taken to be matter incidental to the reference as has been urged on behalf of the workman. I therefore hold that this Tribunal cannot travel beyond the scope of reference and declared him to be entitled to the relief as a Peon i. e. Group D employee a matter which has not been referred to this Tribunal. Therefore the workman is not entitled to any relief looking to the nature of reference, evidence adduced before me. Award is made accordingly. No order as to costs.

V. S. YADAV, Presiding Officer

[No. I-40012/35/88-D. II (B) ]

का.आ. 826 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार सीनियर सुपरिन्टेंडेंट आफ पोस्ट आफिस, ग्वालियर डिवीजन के प्रबन्धन से सम्बद्ध नियोजकों और उनके कार्यकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अजमेरपुर के पंचद को प्रशासन करती है, जो केन्द्रीय सरकार को 27-3-89 को प्राप्त हुआ था।

S.O. 826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Offices, Gwalior Division and their workmen, which was received by the Central Government on the 27-3-1989

#### ANNEXURE 'A'

BEFORE SHRI V.S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(110)/1987

#### PARTIES :

Employers in relation to the management of Senior Superintendent, Post and Telegraph, Gwalior and their workman, Shri Chanda Khan S/o Shri Bunda Khan, Postal Assistant, M.V. Post, Pahadgarh Tehsil Jora, District Morena (M.P.).

## APPEARANCES :

For Workman.—Shri R.C. Shrivastava, Advocate

For Management.—Shri Anoop Choudhary, Advocate.

INDUSTRY.—Post & Telegraph

DISTRICT.—Morena (M.P.)

## AWARD

Dated 31-1-1989

By Notification No. L-40012/9/86-D.II(B) dated 13-7-1987 the Central Government in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication:—

“Whether the action of the management of Senior Supdt. of Post Offices Gwalior division in terminating the services of their workman Shri Chanda Khan S/o Shri Bunda Khan Postal Assistant w.e.f. 30-8-83, is legal and justified? If not, to what relief the workman is entitled and from what date?”

2. Noncontroversial facts of the case are that the workman was appointed as Postal Assistant with effect from 16-10-1981 in the Gwalior Division. He was placed under suspension by the Superintendent of Post Offices, Gwalior Division vide its order dated 29-6-1983. The services of the workmen were terminated under Rule 5 of C.C.S. (Temporary Services) Rules 1965 vide office order dated 30-8-1983. By that time he had put in service from 16-10-1981 to 30-8-1983. The facts for termination of his services were that on 21-6-1983 at about 4.40 p.m. the S.P.M. Gwalior R.S. instructed the Treasurer to remit Rs. 20,000/- only to Iashkhar I.L.O. through the applicant workman. Shri V.G. Dekate, P.A., Gwalior R.S. was ordered to escort the applicant. The Treasurer handed over Rs. 20,000/- to the applicant who counted the cash and gave a clear acknowledgment in the Treasurer Cashbook. The applicant borrowed a leather bag from Shri Kalicharan Rajak, Treasurer and kept the amount inside that bag. Both the official left the office on their Bicycle with the cash bag hunged on its handle. Both the officials stated that the bag was on Bicycle upto Phoolbag Gate and Gurudwara. Both of them stopped their Bicycle and made an attempt to search the bag but in vain. They reported the matter on phone to Gwalior R.S. and to the police station as well. They were suspended with effect from 29-6-1983.

3. It is further admitted that Circle Level enquiries were made and as a result of enquiry the applicant was found guilty for the loss of remittance Rs. 20,000/- and his services were terminated under Rule 5 of the C.C.S. (Temporary Services) Rules 1965 vide order dated 30-8-1983. No action was taken against Shri Dekate.

4. The workman has challenged his termination order inter alia on the following grounds :—

- (1) That the services of the workman were terminated without any charge-sheet, show cause notice and without domestic enquiry.
- (2) That the action of the management in dispensing with the services of the workman is arbitrary, illegal and not in consonance with the principle of natural justice.
- (3) That the management is an industry within the meaning of Sec. 2(j) and he is a workman within the meaning of Sec. 2(s) of the I.D. Act.
- (4) That the termination of the workman amounts to retrenchment and his termination is void abinitio for not complying with the provisions of Sec. 25F of the I.D. Act.
- (5) That the management has violated the principle of Sec. 25H of the I.D. Act.
- (6) That in any case the punishment awarded to the applicant is too harsh and excessive.

5. The case of the management is that the workman was a temporary Government servant and was governed by the C.C.S. (Temporary Services) Rules 1965 framed under Art 309 of the Constitution. The Indian Postal Department is a department of the Government of India and is not an industry within the meaning of Sec. 2(j) of I.D. Act. The termination of the workman is therefore justified and legal in view of the facts and circumstances of the case.

6. I framed the following issues and by findings with reasons thereon are as under :—

## ISSUES

1. Whether the domestic enquiry is proper and legal?
2. Whether the punishment awarded is proper and legal?
3. Whether the management is entitled to lead evidence before this Tribunal?
4. Whether the termination/action taken against the workman is justified on the facts of the case?
5. Relief and costs.

Findings :—

7. Issues no. 1 to 5. The main defence of the management is that the Postal Department is not an industry and the applicant is not a workman within the meaning of I.D. Act. Therefore the provisions of Industrial Disputes Act do not apply to the present case. He is governed by the provisions of C.C.S. (Temporary Services) Rules, 1965

and not by the provisions of the Industrial Disputes Act.

8. In support of this contention reliance is placed on Banalore Water Supply and Sewrage Board Vs. A. Rajappa and others (AIR 1978 S.C. 548) wherein what constitute an industry has been exhaustively considered by the Hon'ble Supreme Court and laid down certain dominant nature of test to determine the same. It has also considered certain organisation and Governmental Departments in the light of sovereign functions of the State, and laid down that "Court should, therefore, so far as possible, avoid formulating or adopting generalisation and hesitate to cast the mould which would not permit of expansion as and when necessary arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business" (Page 594). From the above it is crystal clear that in the above authority Hon'ble Supreme Court has not specifically laid down that the postal department of the Government of India is not an 'industry'. In 1984(49) Indian Factory & Labour Reports p. 57; 1983 Lab.I.C. 135(Ker.); 1981 Lab IC. (NOC) 68(Cal) it has been laid down that the postal and Telegraph department is an industry and full and part time employee of the postal department are workmen for the purpose of Industrial Disputes Act.

9. In the case of Mohan Lal Vs. Management of M/s. Bharat Electronics Ltd. (AIR 1981 SC 1253) also does not advance the cause of the management. In view of the above pronouncement I hold that the Postal & Telegraph of the Government of India is an industry and the applicant is a workman within the meaning of I.D. Act.

10. The second defence of the management is that the workman was a temporary Government servant and his case was governed by Rule 5 of Central Civil Services Temporary Services Rules, 1965 and not by the Industrial Disputes Act. I do not agree. Once a civil servant is a workman his case will fall under I.D. Act. in the case of Mohan Lal (supra) it has been laid down :—

"Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases mentioned in the section itself."

11. Reverting to the facts of the present case, the case of the workman is that his services were terminated without any charge-sheet, show cause notice and without following the provisions of Sec. 25F & 25H of the I.D. Act. The management has only filed the enquiry report conducted by Shri S. Narain, Vigilance Officer, M.P. Circle, Bhopal No. INVA/11-2(Gwalior)/83. This goes to show that it is merely an investigation report of the Vigilance Cell on the basis of which the services of the workman were terminated. This means that his services were terminated without any charge-sheet, show cause notice and without following

the procedure laid down for domestic enquiry. Rule 5 of the C.C.S. (Temporary Services) Rules which has been relied by learned Counsel for the management itself lays down that the services of a temporary Government servant who is not in quasi-government service shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant. It is not the case of the management that any such notice was given or any pay in lieu of notice was paid to the workman. It is settled law that the services of a temporary Government servant or probationer may be terminated by way of punishment only after complying with the provisions of Article 311 of the Constitution which lays down that no person shall be dismissed removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. No such charge-sheet or show cause notice or a domestic enquiry appears to have been issued/held in this case. Therefore the termination of the workman is not only illegal but against the constitutional provisions.

12. On behalf of the management, it has been contended that since the workman was a temporary employee his services were terminated by striking off his name from the service roll and since the provisions of I.D. Act do not apply to him his termination is justified. I am unable to agree. In the case of Delhi General Cloth Mills Ltd. Vs. Shambhunath Mukerji (1977 SCLJ 57), it has been held that striking off the name of workman from the rolls by the management termination of his service as such is retrenchment within the meaning of Sec. 2(0) of the I.D. Act, since there is nothing to show that the provisions of Section 25F (a) and (b) which was mandatory were complied with by the management. Any order of retrenchment in violation of these two precedents conditions is invalid. Same view has been held in the case of Mohan Lal (supra). In this regard, it is pertinent to note that it is not the case of the management that the termination of the workman was by way of punishment inflicted by disciplinary action. Therefore for non-compliance of Sec. 25F of the I.D. Act the termination amounts to retrenchment and it is *vid ab initio* as has been laid down in the case of Mohan Lal (supra).

13. However, assuming for the sake of arguments that the services of the workman were terminated on the report of the Vigilance Officer which means that his services were terminated with a stigma attached. Therefore the principle of natural justice requires that at least a show cause notice ought to have been given and the workman paid wages of mandatory period of notice. This has also not been done. Therefore his termination is not only contrary to and in violation of Rule 5 of C.C.S. (T.S.) Rules, provisions of the Constitution but also against the principle of natural justice. Therefore also his termination is liable to be set aside.



14. On behalf of the management it has been contended that his services were terminated because he was found negligent and occasioned loss to Government to the tune of Rs. 20,000/-. This may be true but that does not mean that the management can terminate the services of a workman without following the law and procedure. I have gone through the inquiry report of the Vigilance Officer and I find that it is not a case of the management or the Enquiry Officer that the workman was guilty of misappropriation of the amount. At the most he may be held responsible for negligence for which termination to my mind appears to be an excessive punishment specially looking to the fact that the other employee, Shri Dekate, was let off escort free for the same act. Therefore looking to the facts and circumstances of the case I am of the opinion that the workman is entitled to be reinstated.

15. In their pleading the management has now here prayed for an opportunity to lead evidence before this Tribunal. Therefore more prayer in the argument cannot be allowed as has been laid down in the case of Shambhu Nath Vs Bank of Baroda (AIR 1984 SC 279).

16. The question arises as to what relief the workman is entitled. Undoubtedly the workman was negligent in his duty. Therefore to my mind he should not be allowed any back wages. He is only entitled to be reinstated from the date of this order with continuity of service. I therefore hold that there was no legal or proper domestic enquiry and his termination on facts and circumstances of the case is not justified and the punishment awarded appears to be excessive. For want of prayer management is not entitled to lead evidence before this Tribunal. I hold and decide these issues accordingly. As such I answer the reference as under:—

That the action of the management of Senior Supdt. of Post Offices Gwalior Division in terminating the services of their workman Shri Chanda Khan C/o Shri Bunda Khan Postal Assistant w.e.f. 30-8-83 is illegal, unjustified and excessive. Workman is entitled to be reinstated from the date of this order with continuity of service & other reliefs but without back wages. No order as to costs.

[No. L-40012/9/86.DJI(B)]

V. S. YADAV, Presiding Officer

का.आ. 827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ इंजीनियर (सी.पी.इन्चार्ज.डी.) बम्बई के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 बम्बई के पञ्चपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.3.89 को प्राप्त हुआ था।

S.O. 827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No.

1, Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Engineer (WZ), C.P.W.D., Bombay, and their workmen, which was received by the Central Government on the 27-3-89.

### ANNEXURE

Reference No. CGIT-18 of 1987

### PARTIES :—

Employers in relation to the management of Chief Engineer (WZ) C.P.W.D., Bombay

### AND

their workmen

### APPEARANCES :—

For the Management.—Mr. M.B. Palshikar, Advocate

For the Workmen.—Mr. M.B. Anchan, Advocate

INDUSTRY—C.P.W.D. STATE.—Maharashtra

Bombay, dated the 14th day of December, 1988

### AWARD

The Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the Chief Engineer (West Zone) CPWD Bombay in relation to his office of the Supdtg. Surveyor of Works (WZ) at Bombay in terminating the services of Shri B.Y. Sadamast, a Peon, with effect from 2-5-1983 is legal and justified? If not, to what relief and from what date, the workman concerned is entitled to?”

2. In the year 1981, there occurred 5 vacancies of Peons in the Office of Supdtg. Surveyor of Works (West Zone), Bombay, due to the promotion of five peons as Clerks. To fill up these vacancies, the Department requisitioned candidates for the said posts through the Employment Exchange, Bombay. The workman was one of the candidates sponsored by the Employment Exchange. The Department however, filled only three posts of peons, there were five vacancies. The workman was one of them. He was appointed as peon with effect from 6-5-1981 vide appointment order (Ex. M-1) dated 1-5-1981. This appointment was on short term basis for period not exceeding three months, as mentioned in Clause 5 of the said order. By the Office Order (Ex. M-5) dated 12-5-1981, the workman was asked to note that his appointment was purely on short term basis and that his services would stand terminated with effect from 31-7-1981 A.N. Accordingly, his services were terminated with effect from 31-7-1981. But by another Order

dated 3-8-1981, (Ex. M-6) he was again offered temporary appointment as peon on short term basis for a period not exceeding three months. By similar orders, the last one (Ex. M-7) having been issued on 9-2-1983, the workman was given temporary assignments on short term basis for periods, not exceeding three months on each occasion. Eventually, the last such appointment was terminated by the Office Order dated 2-5-1983, (Ex. M-10). The details of these appointments are as follows :—

Appointed on	Terminated On
1-5-1981	31-7-1981
Re-appointed On	Terminated On
3-8-1981	31-10-1981
3-11-1981	1-2-1982
3-2-1982	1-5-1982
4-5-1982	31-7-1982
3-8-1981	3-11-1982
5-11-1982	5-2-1982
9-2-1983	2-5-1983

These facts are admitted.

3. According to the workman, the five peons who were promoted as Clerks were reverted to the original posts of peons in the year 1983, and hence the services of three persons, who were appointed as peons in the there out of the five vacancies caused by the promotion in 1981 of eligible peons, were terminated without any notice and without assigning any reason. The workman further contained that after reversion of five clerks as peons the management again promoted two peons namely Shri Shaikh and Mr. Ubhale as Clerk on regular basis. Further due to transfer of one Shri Barve to Nasik there arose one more vacancy of peon. Two more vacancies arose due to promotion of Shri Mungekar and Shri Thakur as Daftaries. It is the grievance of the workman that in spite of these vacancies he was not appointed to any of these posts while the other two persons who were appointed alongwith him as peons have been again employed in same department in some other section. The services of three persons namely Shri S.A. Kamble, Shri Dalvi and Shri A.B. More, who were appointed and who were given breaks like him have been regularised even though Shri Dalvi was junior to him in service. According to him, he has studied up-to 9th standard, he belongs to Scheduled Caste and his date of birth is 1-6-1951 and as such at the time of his original appointment as Peon on 6-5-1981 he was within the age limit and fulfilled the conditions laid down for the post of peons and that is why he was sponsored by the Employment Exchange for the post of a peon. The workman further submitted that Sarvashri Dalvi, Shinde, Rathod and Jadhav, who were appointed like him, who were kept in the same category like him and who were junior to him have been given regular employment even though the roster point for appointing the workman as well as those persons was the same. He contended that the Central Public Works Department is an Industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947 and the termination

of his service is illegal being in contravention of the provisions of the said Act.

4. In the written statement filed by the Superintending Surveyor of Works (WZ) C.P.W.D., on behalf of the employer it is contended that the Office of Chief Engineer is an attached Office and the Office of the Superintending Surveyor of Works (WZ) is part of Chief Engineer (WZ) C.P.W.D. and his function is to advise the Engineer on technical matters. In other words it is technical consultancy to the Chief Engineer and has no filed jurisdiction nor does it employ any work-charged staff. It is further contended that the staff in the Office of the Superintending Surveyor is employed on regular basis and it is governed by Fundamental and Supplementary Rules, Civil Service (Classification, Control and Appeal) Rules and that the Office being a part of the attached office of Ministry of Urban Development, which is of an administrative character, it cannot be regarded as an industry within the meaning of the Industrial Disputes Act. The employer further contended that the two regular vacancies of peons existing in May 1981, in the Office of Superintending Surveyor of Works (WZ) C.P.W.D., as well as other vacancies arising out of transfer, retirement etc. could not be filled in on account of the ban on recruitment imposed by the Government of India. But as special circumstances arose it was decided by the Department to promote five peons, who were educationally qualified, to the posts of LDCs purely on ad-hoc basis till the regular candidates were posted by the Staff Selection Commission with clear understanding that they would be reverted back to the posts of peons as and when the regularity appointed LDCs would take up their appointments. Since this arrangement involved withdrawal of more persons from the post of peons, in order to mitigate the hardship the Department of Personnel, Ministry of Home Affairs, by their order O.M. No. 49016/c79-ESTT(D) dated 19-2-1980, prescribed a procedure, which was different from the procedure for recruitment of peons to normal vacancies, to allow recruitment of peons on purely short-terms basis so that their services could be terminated as and when the promoted peons were reverted from the posts of ad-hoc LDCs. While permitting this recruitment, the Personnel Department had specifically indicated that the appointment order should include a condition that the appointment would be purely on short term basis and such persons were likely to be retrenched after specific period and such appointment would not entitled them to confirmation or future appointment. Accordingly such condition was incorporated in the order given to each one of the new recruits including Shri B. Y. Sadamast. The latter of appointment given to Shri Sadamast very clearly stipulated that his appointment was on short term basis for a period not exceeding three months and Shri Sadamast had accepted the terms and conditions of appointment vide his letter dated 6-5-1981. The employer denied that the appointment of Shri Sadamast was made several times by giving one day's break and further asserted that all along he was given to understand, and which fact was accepted by him,

that the appointment was for a specific short term. According to the employer considering the varying period of breaks the services of Shri Sadamast cannot be said to be continuous. Since the appointment of Shri Sadamast was purely temporary, for a short term and on ad-hoc basis no notice was required to be given to him and his services were terminated as per the terms and conditions of his appointment. It was further contended that since Shri Sadamast was not in continuous service for 240 days the question of complying with section 25-F of the Industrial Disputes Act did not arise. The employer denied that when the services of Shri Sadamast were terminated two persons namely Shri Shaikh and Shri Ubale were promoted and stated that Shri Shaikh and Shri Ubale were promoted as late as 15-1-1985. The employer further stated that the three posts kept vacant for the peons who were promoted as ad-hoc LDCs were re-occupied by the three out of the six peons promoted as ad-hoc LDCs, on their reversion and the remaining three peons promoted as ad-hoc LDCs, reverted as peons, were accommodated by retrenching the short term peons recruited as per the arrangement mentioned above. Shri Mungekar and Shri Thakur, were promoted as Daftary and Barkandaz respectively long after the services of Shri Sadamast was terminated. Moreover, all these vacancies could not be filled because of further reduction in the sanctioned strength of peons in the Office of the SSW(WZ) in view of the bank of recruitment of peons on regular basis. For the same reasons the vacancy that arose due to transfer of Shri Barve could not be filled. The employer further maintained that the peons recruited on purely short term basis against the ad-hoc vacancies had no claim on regular posts as according to the terms and conditions of their appointment. As regards the appointment of Shri Dalvi, it was stated that he was not appointed by the Office of SSW (WZ) which is part and parcel of Chief Engineer's Office and hence there cannot be any question of relative seniority or otherwise of persons appointed by different offices on ad-hoc basis by following independent procedure.

5. In view of the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board V/s. A. Rajappa (1978-two Supreme Court Cases 213) the contention that the Central Public Works Department is not an Industry deserves to be rejected. The functions discharged by the Central Public Works Department are not the sovereign functions of the State and hence in view of the nature of the work done by this department it is very much an industry within the meaning of the Industrial Disputes Act. It is immaterial that the office of the Chief Engineer is an attached office of Ministry of Urban Development and that the Office of the Superintending Surveyor of Works is a part of the said office.

6. It is an admitted position that the five peons in whose vacancies Shri Sadamast and two others namely Shri Sawant and Shri Kokam were appointed, were subsequently reverted in the year 1983 and in view of this reversion, the services of Shri Sadamast and the other two were terminated.

The Superintending Surveyor of Works (WZ) specifically averred in his written statement that the five peons in whose vacancies Shri Sadamast and the other two were appointed were promoted as LDCs purely on ad-hoc basis till the regular LDCs were appointed and posted by the Staff Selection Commission and clear understanding was given to these peons who were promoted as LDCs that they would be reverted back as and when the regular LDCs will take their appointments. This position which is borne out by the documents produced by the First Party is not disputed by the workman. The appointment order given to Shri Sadamast also clearly mentioned that the appointment was on short term basis for a period not exceeding three months and that this short term appointment was not to confer upon him any right for future employment. Admittedly, the workman had accepted this and other terms of his employment. His appointment therefore could be validly terminated on the reversion of the peons who were promoted as LDCs on ad-hoc basis.

7. There is nothing on record to show that any junior in service to Shri Sadamast was retained in service when services of Sarvashi Sadamast, Sawant and Kokam were terminated. Shri Dalvi who, according to Shri Sadamast was junior to him was neither appointed alongwith Shri Sadamast in the temporary vacancies nor was appointed in the Office of the Superintending Surveyor of Works (WZ).

8. The termination of Shri Sadamast's services clearly amounted to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act. It is duly established that on the basis of the several appointment orders given from time to time from 1-5-1981 to 9-2-1983 Shri Sadamast had worked for 240 days in each of the two calendar years preceeding his termination. No doubt, he was given break after every three months and was re-appointed by fresh order of appointment. But these breaks have no legal effect and does not render the service of Shri Sadamast not continuous within the meaning of section 25-F of the Industrial Disputes Act. The service of 240 days in a period of 12 calendar months is equal not only to service for a year but is deemed to be continuous service even if interrupted.

9. As Shri Sadamast was in continuous service for not less than one year it was incumbent on the first party to have complied with the conditions precedent to retrenchment laid down in section 25-F of the Industrial Disputes Act before terminating Shri Sadamast's services. It was necessary to serve him with one month's notice or to pay him wages in lieu of such notice and to pay him retrenchment compensation as per the provision contained in clause (b) of section 25-F. Admittedly, neither of these conditions was fulfilled before terminating Shri Sadamast's services. Admittedly he was not given notice terminating his services nor he was paid any wages in lieu of notice nor was he given any retrenchment compensation. The retrenchment and, therefore the termination was therefore void ab-initio and the workman Shri Sadamast is

entitled to be reinstated in service on that ground above.

10. It is contended that Shri Sadamast has already been appointed as a Beldar with effect from 30-5-1983 and hence he would not be entitled to be reinstated as a peon, as he has already accepted the appointment as Beldar, which post also carries the same pay. There is no substance in this contention because the workman has to be reinstated in the post which he was holding at the time of his termination. Moreover, Shri Sadamast has not been appointed as a Beldar in any permanent post. He is being given work as Beldar purely as a casual worker and no appointment order was issued appointing Shri Sadamast as a Beldar in any permanent post. The Superintendent Engineer, Bombay Central Circle, PWD-3 has specifically confirmed the position that Shri Sadamast was not given appointment letter as work charged employee. Shri Sadamast therefore cannot be denied reinstatement on the basis that he has accepted permanent employment in another post under the same employee. He however would not be entitled to full back wages for the period for which he has been serving as a Beldar.

11. In the result it is declared that the action of the Chief Engineer (WZ), C.P.W.D., Bombay in relation to his Office of the Superintending Surveyor of Works (WZ) at Bombay in terminating the service of Shri B.Y. Sadamast with effect from 2-5-1983 was illegal and void. The first party employer is directed to reinstate Shri Sadamast as a Peon in the Office of the Superintending Surveyor of Works (WZ) at Bombay and pay him full back wages from the date of his termination till his actual reinstatement less the amount paid as wages to him in the post of Beldar, from 31-5-1983 onwards. Award accordingly.

M. S. JAMDAR, Presiding Officer

[No. L-42012/7/86-D.II(B)]

नई दिल्ली, 13 अप्रैल, 1989

का. आ. 828:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण से, कन्द्रीय सरकार सैसर्त एलकौक एशडाऊन एण्ड कम्पनी लिमिटेड, भावनगर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 13th April, 1989

S.O. 828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Alcock Ashdown and Company Limited, Bhavnagar and their workmen which was received by the Central Government.

## ANNEXURE 'A'

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

REFERENCE NO. CGIT-13 OF 1987

### PARTIES :

Employers in relation to the management of Alcock Ashdown & Company, Bhavnagar,

### AND

Their workmen.

### APPEARANCES :

For the Management : Mr. K. M. Thakker Advocate.

For the Workmen : Mr. Subodh Mehta, General Secretary of the Union.

INDUSTRY : Engineering

STATE : Gujarat

Bombay, dated the 27th day of February, 1989

### AWARD

The Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of M/s. Alcock Ashdown & Company Limited, Bhavnagar in dismissing Shri Nanji Tapu Mer, Welder from the services is justified? If not then to what relief the workman is entitled to and with effect from what date."

2. The workman was served with a charge sheet on 27-8-1984 for the misconducts of :

- (i) continuously disobeying reasonable orders of immediate superiors and;
- (ii) committing riotous and disorderly behaviour by physically assaulting Mr. Solanki, an Officer of the company with the help of tiffin box and thereafter slapping him.

The workman was also suspended pending enquiry and the Assistant Manager (Marketing) was appointed as the Enquiry Officer to conduct the domestic enquiry. The domestic enquiry was concluded ex parte on 31-3-1985 and by an order dated 28-5-1985 the workman was discharged from service. As at the material point of time, conciliation proceedings were pending before the Assistant Labour Commissioner (Central), Adipur, an approval application was forwarded to the Conciliation Officer on the very day on 28-5-1985. While the approval application was pending before the Conciliation Officer, the workman raised an Industrial dispute in July, 1985, before the Conciliation Officer claiming reinstatement in service. The Conciliation Officer rejected the approval application vide his order dated 14/16-10-1985 but he continued the Conciliation proceedings with reference to the workman's demand for reinstatement. The said conciliation proceedings resulted into failure and hence the Conciliation Officer submitted a failure report on 25-3-1986, as a consequence of which the present reference has been made.

3. In his statement of claim, the workman has taken a contention which goes to the root of the matter. According to him, as the Conciliation Officer has refused to grant approval to the order terminating his services (it was an order of discharge and not an order of dismissal) passed by the management during the pendency of Conciliation proceedings, contemplated by Section 33(2)(b) the order of termination was rendered invalid and honest and the workman continued to be in the service of the company and hence the reference is bad in law as the question of adjudicating upon

the order did not exist at the time when the reference was made.

4. The order which is invoked by the workman in support of the above contention was passed by the Conciliation Officer, Assistant Labour Commissioner (Central) Adipur, (Kutch), in the matter of the application under sub-section (2) of section 33 of the Industrial Disputes Act, filed by the General Manager of the company requesting approval of action relating to termination of service of Shri Nanji Tapu Mer by the management of Alcock Ashdown & Co Ltd. It reads as follows :—

“The General Manager, M/s. Alcock Ashdown & Co. hereafter referred as the Company vide his application dated 28-5-1985 moved this application before me for my approval to the action of the company taken by discharging the service of Shri Nanji Tapu, Male Welder. The application is marked as Annex. I. The company has sought my approval under Section 33(2) of the I. D. Act. The matter was admitted and the hearing in the matter fixed by calling the parties who advanced their view points before me. Sri Subodh Mehta, General Secretary, Bhartiya Mazdoor Kamdarsangh (CITY) appeared as a counsel to Shri Nanji Tapu, the discharged workman in the proceedings held in this regard. The workman submitted his written statement vide his letter dated 9th and 11th July, 85 which are placed at Annex. 2 & 3. The company further submitted rejoinder vide dated 13-8-85 which is annexed at Annexure-4. j

The dispute involved in the matter is that one Shri Nanji Tapu, Male Welder employed in the company was discharged for committing offences of disobedience of instructions of his supervisors and committed riotous or disorderly behaviour during office hours. A domestic enquiry under Shri B.S. Kane, Asstt. Manager (Marketing) was appointed. The enquiry officer held his enquiry proceedings on various dates right from 31-1-85 to 31-3-85. The enquiry was concluded Ex. parte on 1-4-85. On completion of the enquiry the charges against the workman were found proved. By this the workman was served a second and final show cause notice against the proposed punishment of discharging from service. The services of the workman were then terminated w.e.f. 28-5-85. The company have explained the various steps taken to ensure full and reasonable opportunities to the workman to defend himself in the inquiry proceedings. The enquiry officer has also taken care to see that proceedings are held by giving required opportunity to the workman. The workman according to the company has not attended inquiry and tried to avoid it by all means. The enquiry in absence of proper co-operation from the workman had been held, ex-parte and the workman was discharged having been found guilty of the charges framed against him.

The workman has refuted the charges and submitted his written reply to the charges framed against him. He has explained that on all stages of inquiry he made available himself but the inquiry officer continued the inquiry as per norms of departmental inquiry. He was not provided the relevant documents against he was to defend himself. So much so he was not provided the copies of the inquiry proceedings and was not allowed to get the documents read by his counsel as the same was written in English language which the workman was not knowing. The workman contended that he was not served with a show cause notice and also the discharge order. He pleaded ignorance about the action of management with regard to discharge of his services. He contended that inquiry has been malafide with a sole and determined motive of terminating his services. He therefore, opposed the

demand of the company seeking approval of the action under Section-33.

I have gone through the inquiry proceedings and all documents produced before me by the company. I have also gone through the written statement of the workman filed in reply. I have heard the arguments of the company Advanced by Shri K. L. Godalia, Asstt. Manager (P&A). I have also heard the arguments of Shri Subodh Mehta, Counsel of the discharged workman Shri Nanji Tapu. By considering the view points of both the parties before me I am of the opinion that though the procedure adopted and followed by the employer in this matter has been in order yet the conclusion followed and drawn are not based on congenial and smooth outcome of natural justice. The penalty imposed on the workman has been disproportionately higher in relation to charges levelled against the workman. It is on the record that the workman was not allowed to get the inquiry proceedings read through. It is also on the record that enquiry report has not been served positively on the workman. These instances indicate that the proper and reasonable opportunities have not been extended to the workman in the course of inquiry. I, therefore, for the reasons mentioned above do not find any ground for according approval to the action of the company.

Given under my hand and seal this 14th day of October, 1985.”

5. It appears that the Government was not aware of the above quoted order passed by the Conciliation Officer and made this reference on the basis of the failure report submitted by the Conciliation Officer, in respect of the industrial dispute raised by the workman challenging the termination of his service and claiming reinstatement. Obviously, the Conciliation Officer did not take into consideration the effect of the order passed by him refusing to grant approval and proceeded with the Conciliation proceedings in respect of the dispute raised by the workman, on the assumption that the dispute survived even after refusal to grant approval. This however, would not preclude the workman from contending that as the termination order was rendered invalid by the refusal, the reference for adjudication upon the termination is itself bad in law.

6. The effect of refusal to grant approval contemplated by Section 33(2) of the Industrial Disputes Act, by Conciliation Officer or Board before whom any Conciliation proceeding is pending in respect of an industrial dispute or by an Arbitrator or Labour Court or Tribunal or National Tribunal before whom any proceeding in respect of any industrial dispute is pending was considered by the Lordships of the Supreme Court in the case of *Strawboard Manufacturing Company and Gobind (1962) 1 L.L.J., page 420*. After analysing the scheme of section 33 of the Industrial Disputes Act, and mentioning the difference between sub-section (1) and sub-section (2) of section 33, their Lordship stated the effect of refusal to grant approval, in the following words :—

“There can therefore be no doubt that sub-section (2)(b) read together with the proviso, contemplates that the employer may pass an order of dismissal or discharge before obtaining the approval of the authority concerned and at the same time make an application for approval of the action taken by him. It is however, urged on behalf of the respondent that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the tribunal refuses to approve of the action, the workmen would be left with no remedy as there is no provision for reinstatement in Section 33(2). We, however, see no difficulty on this score. If the tribunal does not approve of the action taken by the employer, the result would

be that the action taken by him would fall and thereupon the workmen would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense, the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the tribunal under Section 33(2)."

7. The above mentioned position of law was reiterated by the Lordships of the Supreme Court in the case between Tata Iron and Steel Company, Ltd. and Modak (S.N.), (1965) II L.L.J. 128). Their Lordships observed as follows:—

"It is now well-settled that the requirements of the proviso to be satisfied by the employer on the basis that they form part of the same transaction; and stated generally, the employer must either pay or offer the salary for one month to the employee before passing an order of his discharge or dismissal, and must apply to the specified authority for approval of his action at the same time, or within such reasonably short time thereafter as to form part of the same transaction. It is also settled that if approval is granted, it takes effect from the date of the order passed by the employer for which approval was sought. If approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative and the employee can legitimately claim to continue to be in the employment of the employer notwithstanding the order passed by him dismissing or discharging him. In other words, approval by prescribed authority makes the order of discharge or dismissal effective; in the absence of approval such an order is invalid and inoperative in law."

8. It was contended on behalf of the management that the refusal by the Conciliation Officer to grant approval to the termination does not have the same effect as refusal by the Court or Tribunal to grant approval because the Conciliation Officer cannot adjudicate upon the validity of the termination order. There is no substance in this contention because while deciding the approval application neither the Conciliation Officer nor the Board nor the Labour

Court nor the Tribunal is expected to adjudicate upon the termination order. That can be done only in reference under section 10 or upon a complaint under section 33(A) which has to be adjudicated upon as if it were a dispute referred for that purpose. The jurisdiction of the authorities whose approval is sought is limited and the Conciliation Officer has all the jurisdiction to refuse to grant approval.

9. It was further urged on behalf of the management that the Conciliation Officer while refusing to grant approval to the termination has exercised jurisdiction which he did not possess in as much as he took into consideration the aspect of severity of punishment. But that was not the only the ground on which the approval was refused by the Conciliation Officer. He has specifically held that proper opportunity was not given to the workman to defend himself at the enquiry. He has also given reasons for arriving at this conclusion. Moreover, taking into consideration some aspect of the matter which the Conciliation Officer has no jurisdiction to do would not render the order refusing to grant approval as one without jurisdiction. Granting or refusing to grant approval on non-germane considerations would not render the order as one without jurisdiction. Such an order may be wrong and could have been successfully challenged by filing a writ. But it was not an order passed without jurisdiction and hence cannot be ignored. The management if it was aggrieved by the order passed by the Conciliation Officer could have challenged it by filing a writ petition in the High Court. But the management has not chosen to follow that course. The order therefore stands and must be given the effect which has been stated by Their Lordships of the Supreme Court in unmistakable terms. It was also open to the management to pass a fresh order of termination after holding a proper enquiry. Even now it can do so. But the effect of the order passed by the Conciliation Officer is that the order of termination was invalid and ineffective and the workman continued to be in the service of the company. There was therefore no question of adjudicating upon the termination order which did not exist in view of the order of the Conciliation Officer refusing to grant approval. This order was passed by the Conciliation Officer long before the reference was made and hence there was no industrial dispute in existence when the reference was made. There is therefore no question of adjudication upon the termination order which was rendered invalid and ineffective by the aforesaid refusal to grant approval to the same. The reference is therefore answered accordingly.

M. S. JAMDAR, Presiding Officer

[No. L-42012/65/86-D.II(B)]

HARI SINGH, Desk Officer

